

Digitized by the Internet Archive in 2023 with funding from University of Toronto

GOVT PUBNS



Sor. Doc Can Com

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament 1951 CAIXY 2 -51C54

(Second Session)

443

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 1

TUESDAY, NOVEMBER 13, 1951 THURSDAY, NOVEMBER 15, 1951

WITNESSES:

Mr. T. D. MacDonald, Commissioner, and Mr. A. S. Whiteley, Deputy Commissioner, Combines Investigation Commission.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

JOINT COMMITTEE OF THE SENATE

AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen: The Honourable Senator A. L. Beaubien,
James Sinclair, Esq., M.P.

FOR THE SENATE

Hon. W. M. Aseltine, Hon. George P. Burchill, Hon. Vincent Dupuis, Hon. J. G. Fogo, Hon. J. A. Godbout, Hon. W. H. Golding, Hon. C. G. Hawkins, Hon. R. B. Horner, Hon. Norman P. Lambert, Hon. C. C. Pratt, Hon. Cyrille Vaillancourt.

FOR THE HOUSE OF COMMONS

Mr. R. Beaudry,
Mr. W. A. Boucher,
Mr. W. F. Carroll,
Mr. C. W. Carter,
Mr. Robert Cauchon,
Mr. Gordon Churchill,
Mr. D. A. Croll,
Mr. John Dickey,
Mrs. Ellen Fairclough,
Mr. D. M. Fleming,
Mr. E. D. Fulton,
Hon. Stuart Garson,
Mr. D. S. Harkness,

Mr. J. H. Harrison,
Mr. Geo. H. Hees,
Mr. R. Jutras,
Mr. A. MacInnis,
Mr. Wm. M. Mott,
Mr. A. C. Murray,
Mr. A. Y. McLean,
Mr. L. E. Roberge,
Mr. F. D. Shaw,
Mr. A. W. Stuart,
Mr. W. R. Thatcher,
Mr. W. J. Welbourn.

A. L. BURGESS, Clerk of the Committee.

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8, 1951.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Hugessen, seconded by the Honourable Senator Taylor—

That the Senate do unite with the House of Commons in the appointment of a Joint Committee of both Houses of Parliament to consider the Interim Report of the committee appointed to study Combines Legislation, tabled in the Senate Tuesday, November 6, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon;

That the following Senators be appointed to act on behalf of the Senate on the said Joint Committee, namely the Honourable Senators Aseltine, Beaubien, Burchill, Dupuis, Fogo, Godbout, Golding, Hawkins, Horner, Lambert, Pratt and Vaillancourt;

That the Committee have power to appoint, from among its Members, such sub-committees as may be deemed advisable or necessary; to send for persons, papers and records; to examine witnesses under oath; to sit during sittings and adjournments of the Senate, and to report from time to time;

That the Committee have power to print such papers and evidence from day to day as it may order for the use of the Committee and of Parliament, and that Rule 100 of the Senate be suspended in relation thereto;

That a Message be sent to the House of Commons to inform that House accordingly.

After further debate, and-

The question being put on the said motion,

It was resolved in the affirmative.

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 13, 1951.

The Honourable Senator Beaubien, from the Joint Committee of the Senate and House of Commons on Combines Legislation presented their first Report.

The same was then read by the Clerk, as follows:-

TUESDAY, 13th November, 1951.

The Joint Committee of the Senate and House of Commons on Combines Legislation begs leave to present the following as a first Report:

Your Committee recommends:

- 1. That ten of its members constitute a quorum.
- 2. That the Committee be empowered to retain the services of counsel.

All which is respectfully submitted.

A. L. BEAUBIEN, Chairman.

With leave of the Senate, The said Report was adopted. Attest.

L. C. MOYER, Clerk of the Senate

House of Commons, Tuesday, November 6, 1951.

Resolved,—That a Joint Committee of both Houses of Parliament be appointed to consider the Interim Report of the committee appointed to study Combines Legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

That twenty-six Members of the House of Commons, to be designated by the House at a later date, be Members of the Joint Committee on the part of this House, and that Standing Order 65 of the House of Commons be sus-

pended in relation thereto;

That the said committee have power to appoint, from among its Members, such sub-committees as may be deemed advisable or necessary; to call for persons, papers and records; to examine witnesses under oath; to sit while the House is sitting, and to report from time to time;

That the said committee have power to print such papers and evidence from day to day as may be ordered by the committee for the use of the committee and of Parliament, and that Standing Order 64 of the House of Committee

mons be suspended in relation thereto.

And that a message be sent to the Senate requesting that House to unite with this House for the above purpose and to select, if the Senate deems advisable, some of its Members to act on the said proposed joint committee.

FRIDAY, November 9, 1951.

Resolved,—That Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Churchill, Croll, Dickey, Fairclough (Mrs.), Fleming, Fulton, Garson, Gillis, Harkness, Harrison, Hees, Jutras, Mott, Murray (Oxford), McLean (Huron-Perth), Roberge, Shaw, Sinclair, Stuart (Charlotte), Thatcher, Welbourn be appointed to act on behalf of the House of Commons as Members of the Joint Special Committee established Tuesday, November 6th, 1951 to consider the Interim Report of the Committee appointed to study Combines Legislation tabled in the House of Commons, Friday, October 12th, 1951 and to consider appropriate amendments to the Combines Investigation Act based thereon.

That a Message be sent to the Senate informing Their Honours that the above Members have been appointed to act on behalf of the Commons on the said Joint Committee of both Houses.

Monday, November 12, 1951.

Ordered,—That the name of Mr. MacInnis be substituted for that of Mr. Gillis on the said committee.

TUESDAY, November 13, 1951.

Ordered,—That ten of its members constitute a quorum of the said Committee.

Ordered,—That the said Committee be empowered to retain the services of counsel.

Attest.

LEON J. RAYMOND,

Clerk of the House.

REPORT TO THE SENATE

Tuesday, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

- 1. That ten of its members constitute a quorum.
- 2. That the Committee be empowered to retain the services of counsel.

All of which is respectfully submitted.

A. L. BEAUBIEN,

Joint Chairman.

REPORT TO THE HOUSE OF COMMONS

Tuesday, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as a

FIRST REPORT

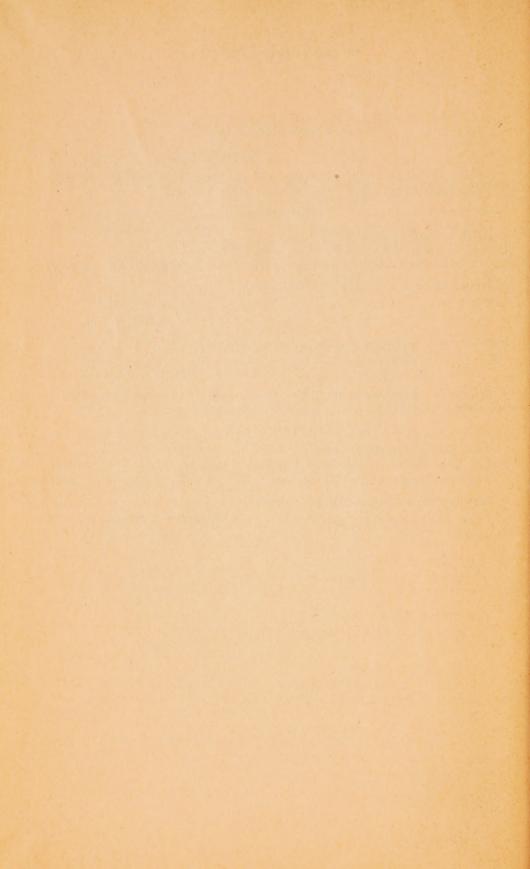
Your Committee recommends:

- 1. That ten of its members constitute a quorum.
- 2. That the Committee be empowered to retain the services of counsel.

All of which is respectfully submitted.

JAMES SINCLAIR,

Joint Chairman.



MINUTES OF PROCEEDINGS

TUESDAY, November 13, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 11 o'clock a.m.

Members present:

For the Senate: The Honourable Senators Aseltine, Beaubien, Burchill, Fogo, Golding, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carter, Cauchon, Croll, Dickey, Fleming, Fulton, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (Oxford), McLean (Huron-Perth), Shaw, Sinclair, Stuart (Charlotte), Thatcher, Welbourn.

On motion of the Honourable Senator Burchill, the Honourable Senator Beaubien was appointed Joint Chairman representing The Senate.

On motion of Mr. Welbourn, Mr. Sinclair was appointed Joint Chairman representing the House of Commons.

The Joint Chairmen thanked the Committee for the honour conferred upon them.

On motion of Mr. Croll,-

Resolved,—That the Chairman order the printing from day to day of such copies, in English and French, of the Minutes of Proceedings and Evidence of the Committee as he may consider necessary.

On motion of Mr. Jutras,-

Resolved,—That the Committee recommend that ten members constitute its quorum.

On motion of Mr. Croll,-

Resolved,—That a sub-committee on procedure and agenda, comprising the Joint Chairmen and seven members to be named by them, be appointed.

On motion of Mr. Croll.-

Resolved,—That the Committee ask that it be empowered to employ counsel.

On motion of Mr. MacInnis,-

Resolved,—That certain organizations who have stated their views through the medium of the press and others who have made representations to the Minister of Justice be invited immediately to submit briefs and to indicate whether they wished to appear before the Committee.

It was agreed that the whole question of the calling of further witnesses be referred to the Sub-Committee on Procedure and Agenda with instructions to report to the main Committee at its next meeting.

At 12.10 o'clock p.m. the Committee adjourned to the call of the Chair.

THURSDAY, November 15, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m.

The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., Joint Chairman, were present, Mr. Sinclair presiding.

Also present,

For the Senate: The Honourable Senators Aseltine, Burchill, Golding, Hawkins, Horner, Lambert, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Fulton, Harrison, Hees, Jutras, Mott, Murray (Oxford), McLean (Huron Perth), Shaw, Stuart (Charlotte), Thatcher, Welbourn.

In attendance: Mr. T. D. MacDonald, Commissioner, and Mr. A. S. Whiteley, Deputy Commissioner, Combines Investigation Commission.

On motion of Mr. Croll,

Resolved,—That the Sub-Committee on Procedure and Agenda be enlarged to comprise the Joint Chairman and eight members.

The presiding Chairman announced the members of the Sub-Committee on Procedure and Agenda to be, in addition to the Joint Chairman, the Honourable Senator Burchill and Messrs. Boucher, Croll, Fleming, Fulton, MacInnis, Shaw, Stuart (Charlotte).

The presiding Chairman presented the First Report of the Sub-Committee on Procedure and Agenda which is as follows:

NOVEMBER 14, 1951

Your Sub-Committee on Agenda and Procedure met on November 14th and has agreed to recommend,

1. That the associations referred to at the last meeting of the Committee, i.e., those who have publicly stated their position in regard to the report of the MacQuarrie Committee and those who have made representations thereon to the Minister, be the first witnesses to be given an oportunity to appear before the Committee.

In accordance with this recommendation tentative arrangements have been made, subject to confirmation by the main Committee, to hear the representatives of the Canadian Congress of Labour on Tuesday, November 20th and the representatives of the Allied Beauty Equipment Manufacturers and Jobbers Association on Wednesday, November 21.

- 2. That no provincial association affiliated with a national association which has made representations to the Committee be heard unless the provincial body states that it dissents from the views expressed by the national organization.
- 3. That the Committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the Committee.
- 4. That the brief be not read in Committee but that examination be confined to a short statement by the witness, and questioning.
- 5. That, if possible, not more than one sitting of the Committee be allotted to the examination of the representatives of any one organization.

6. That travelling expenses be paid only to witnesses who appear at the request of the Committee and not to those who are heard on their

own application.

7. That the Clerk of the Committee be instructed to furnish representatives of the press with copies of briefs submitted, the day preceding the appearance of the witnesses on the understanding that they will not be released until the witnesses are called.

8. That the Committee sit at 10.30 a.m. on Tuesday, November 20

and every week day thereafter excepting Saturday.

On motion of Mr. Croll, the first report of the Sub-Committee on Procedure and Agenda was concurred in.

Mr. Croll moved that the Combines Investigation Commission be asked to resolve, in legal form, the recommendations contained in the Interim Report of The Commttee to Study Combines Legislation.

Mr. Fulton moved in amendment thereto that the following words be added: and that there be laid before the Committee the draft bill based on the Committee's Report already proposed by the Combines Investigation Branch.

After discussion, and the question having been put on the said amendment, it was negatived.

And the question having been put on the motion of Mr. Croll, it was resolved in the affirmative.

Mr. MacDonald was called, heard and questioned.

Mr. MacDonald tabled a proposed draft bill based on the recommendations of the Committee to Study Combines Legislation, entituled. An Act to amend the Combines Investigation Act, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

The witness retired.

At 12.40 o'clock p.m. the Committee adjourned until Tuesday, November 20, at 10.30 o'clock a.m.

A. L. BURGESS, Clerk of the Committee.



EVIDENCE

NOVEMBER 15, 1951 10:30 a.m.

The CHAIRMAN: I call the committee to order. Might I say that it is my intention with this committee to call it to order just as soon as we have a quorum. With knowledge of that fact in mind, I am sure that the members will be prompt in their attendance.

The first order of business this morning is to present an apology on my own behalf for a misunderstanding which developed because I moved the committee meeting forward from Friday to Thursday. One of the members spoke to me about it and I apologized. But at the same time, in the report of the steering committee, you will find that we intend to have regular meetings from now on. I offer my apologies to Mr. Beaudry.

Now, I would like to make the first report of our steering committee, but before I do so, let me say that when the steering committee was actually called, we found that, because it was a joint committee, we were not able to give representation to the social credit group. That was unfortunate. However, by consent of each of the parties concerned, we enlarged the steering committee from a membership of 9 to 10. Perhaps a motion would now be in order to that effect.

Mr. Croll moves and Mr. Beaudry seconds the motion that the steering committee be composed of 10.

Anticipating that motion we had Mr. Shaw present with us at our first meeting.

The first report of the steering committee is as follows:

1. That the associations referred to at the last meeting of the committee i.e., those who have publicly stated their position in regard to the report of the MacQuarrie committee and those who have made representations thereon to the minister, be the first witnesses to be given an opportunity to appear before the committee.

The clerk of the committee, after our last meeting, telephoned all these groups and asked them to file their briefs as quickly as possible. These two are the groups who said they would have their briefs filed first, the Canadian Congress of Labour, whom we will hear on Tuesday, November 20, and the Allied Beauty Equipment Manufacturers and Jobbers Association, whom we will hear on Wednesday, November 21. Is that first item agreeable to the committee?

Agreed.

2. That no provincial association affiliated with a national association which has made representations to the committee be heard unless the provincial body states that it dissents from the views expressed by the national organization.

There will be complete opportunity to file briefs; but as far as being heard before the committee is concerned, we wanted as much as possible to eliminate duplication. Is that agreed?

Agreed.

3. That the committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the committee.

As soon as we receive the briefs we will submit them to the members of the committee so that they may have an opportunity to study them and get a knowledge of the contents before we have the witnesses appear before us. Agreed?

Agreed.

4. That the brief be not read in committee but that examination be confined to a short statement by the witness, and questioning.

Agreed?

Agreed.

5. That, if possible, not more than one sitting of the committee be allotted to the examination of the representatives of any one organization.

That will, of course, depend on the extent of the questioning, but as a general rule I thought that would be advisable. Agreed?

Agreed.

6. That travelling expenses be paid only to witnesses who appear at the request of the committee and not to those who are heard on their own application.

Agreed?

Agreed.

7. That the clerk of the committee be instructed to furnish representatives of the press with copies of briefs submitted, the day preceding the appearance of the witnesses, on the understanding that they will not be released until the witnesses are called.

Agreed?

Agreed.

8. That the committee sit at 10.30 a.m. on Tuesday, November 20, and every week day thereafter excepting Saturday.

We have the priority on 10.30 sittings, but on Wednesdays some of the Committee have caucuses and if there is any caucus on Wednesday, then we will hold the sitting on Wednesday afternoon.

Several members came to me to inquire about one point in the order of reference, that point being that at the conclusion of the first paragraph—"and to consider appropriate amendments to the Combines Investigation Act based thereon." There seemed to be some doubt as to whether we ourselves would frame that legislation or whether we were going to await reference of the government legislation from the House. On the first point the Minister of Justice said that the intent was expressed right here that this committee will be expected from their deliberations to suggest legislation to the House. As with all suggestions of committees it does not necessarily follow that the government will act upon those suggestions.

I then asked the Minister of Justice whether in that case we might have the advice of the Combines Branch Commissioners on such legislation by having them turn into legal form the recommendations which were made by the MacQuarrie Commission. The Minister of Justice said he had no objection to that at all. I then checked with the clerk of the committee to see if this would establish a precedent and he informed me that this has been done on

many occasions, most notably in the Veterans Affairs Committee where draft bills were prepared by the department and given to the committee as a starting point.

As a result of that I took the liberty of asking Mr. MacDonald, the Combines Branch Chief Commissioner, to turn into legal form the two recommendations of the MacQuarrie Commission with the understanding that if this committee would like that as a starting point for our work it would be made available to the members. If you do not want it, then it will not be made available.

Now, here this morning we have Mr. MacDonald, the Chief Commissioner of the Combines Branch; Mr. Whitely, the Deputy Commissioner; Mr. Phelan, the chief counsel, and Mr. Fauvreau, junior counsel.

Now, unless there are any observations by the members I think we will call on Mr. MacDonald.

Mr. Fulton: Just before you do, Mr. Chairman, the last remarks made by you on that point require some discussion. To my recollection of what took place in the House the Minister of Justice said there was already draft legislation in the department. He said his intention—I think he said—was to make it available to the committee by way of a suggestion. Do I now understand there is no such draft legislation previously prepared and all that that will be done will be for Mr. MacDonald now to prepare the suggested draft bill?

The Chairman: That is why I was so careful to clear up that matter with the Minister of Justice. The Government, of course, asked Mr. MacDonald to prepare a draft. Then the members of the government would consider that draft, and frame the legislation which would become a matter of government policy. This was, of course, referred to in the Speech from the Throne. Such a bill, of course, could only come to us through the House of Commons. That is why I want to make it quite clear that what I asked for was to have a draft prepared by the Combines branch for us, translating into legal terminology the recommendations of the MacQuarrie Commission.

Mr. Fulton: Is it not the case that it can only come to us through the House because you remember on the Veterans Affairs Committee there was no prior committee or commission which met and recommended certain things which were then put into shape by the department for the purpose of our committee? The government itself, or the minister, as a matter of government policy apparently had the Department of Veterans Affairs prepare certain draft legislation which embodied the ideas then current in the government which would be incorporated in the veterans' charter and that was submitted direct to the Veterans Affairs Committee simply as a draft to form the basis of our discussions and it was those drafts-in some cases with amendments and in some cases without amendments—which were reported and recommended by the committee to the House as the form of the veterans' charter. So, the mere fact that a bill has been prepared by the Combines Investigation Commission and discussed by the cabinet does not, as I see it, in any way prevent that same legislation, which is still only draft legislation, from coming first to this committee without having been submitted previously to the House, and I think that we would like to know if they did have draft legislation just what was in their minds at the time previously. Possibly we will have it in two forms, the draft bill which has already been considered and the new draft bill, if Mr. MacDonald is going to prepare the new one. But in view of what the minister said in the House it was to be draft legislation already prepared which was to be placed before the Committee.

Mr. Croll: Did he not make that observation while this resolution was under discussion?

Mr. Fulton: Yes.

Mr. Croll: Mr. Chairman, Mr. Fulton is right when he indicated that the legislation which we had before us in the Veterans Affairs Committee was sent to us by the Veterans Affairs Department; yes, and that is exactly what the chairman has suggested this morning, that the Combines Branch is presenting us with what they consider to be the results, the legislation that might follow from the MacQuarrie report. That is exactly on all fours, exactly an all fours with the legislation that we had before the Veterans Affairs Committee. That was not government legislation, nor is this government legislation. We are asked to consider this as a draft amendment, for that is all that it is, that would be submitted to us, and in the light of that we would make a recommendation. That is the position as I see it, exactly the same situation as we had before the Veterans Affairs Committee and it worked out very well.

The CHAIRMAN: That is the very point I raised. There is a difference between the Veterans Affairs Department preparing a draft for discussion by that committee, and the government putting forward a bill as a matter of government policy. Exactly the same thing is true with the draft prepared by Mr. MacDonald, the combines commissioner, if he is asked to translate the recommendations of the MacQuarrie Commission into legal form, and he does so; but as to whether or not that is accepted by the government in the form of legislation I think is a very different matter. If it is accepted by the government then it should come to us through the House of Commons for approval. I put it to the committee that, if they want something to work on, this draft is a base and I think it would be a good thing because it would limit our area of future committee work. If the committee does not want that but wants to start off right from scratch without any such legislative base on which to work, I have no objection.

Mr. Croll: There is no objection, it was merely an observation made by Mr. Fulton. There is no objection.

Mr. Fulton: This is the point that I have in mind. If we are going to have draft legislation then we should have it coming to us through the proper channel, from the House, because the speech from the throne certainly indicated there was draft legislation which would be submitted to us; and to complete our investigation into this matter I think we should know what was in the mind of the government at that time; that is, if it is to be through a new draft which Mr. MacDonald has prepared, if that is not the same then we can only proceed on the assumption that it has not received government approval, and that if any draft bill had been prepared by Mr. MacDonald it would have to be submitted to the cabinet for approval; and I take it that such is not the case with respect to what Mr. MacDonald is now to present to us; so I take it that we are to assume that the draft which was submitted to the caboinet, as we understood from the speech from the throne was the case, and which is now confirmed by the chairman, is different from the draft which Mr. MacDonald is now being asked to prepare. So, I think we should have that so that we can see it and know exactly what is involved in the change. I think we should study the language of the two draft bills.

Mr. Jutras: Hasn't Mr. Fulton something different in mind? As I understand the chairman's suggestion it is that we should have this draft bill; in other words, through it we get the recommendations of the MacQuarrie Commission report in legal form and in that way we can see and we can know what the MacQuarrie Commission recommended. I think it would be helpful if we had that in legal terms. Whether or not the government decide to adopt or do anything with that draft bill is an entirely different question, a question of government policy. Our job here is to make recommendations along the lines of the MacQuarrie Commission report. When we have this material,

before us we can see whether it sets these recommendations out in legal form and we can go on from there. I think it is fair that we should have that.

Mr. Fulton: Well, it is not quite accurate because the minister did state, and I took it as a statement of policy at the time, that draft legislation had been prepared and it was then hoped it would be submitted to the committee. Now, that draft legislation can only refer to draft legislation that was already prepared.

Mr. Beaudry: The terms of reference would settle that point.

The CHAIRMAN: The order of reference reads:

That a joint committee of both houses of parliament be appointed to consider the interim report of the committee appointed to study combines legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

There is no suggestion in the order of reference that we are going to have the right to see the government's bill.

Mr. Croll: The minister made it very clear. He was most emphatic that he was referring no legislation to this committee, and I heard him on the last night when he spoke; he was most emphatic on that point, and he was questioned by some members on the other side and he emphasized it.

Mr. Fulton: But he was most emphatic on the point that although he was not going to introduce legislation into the house, nevertheless there was a draft of the legislation prepared and available and it was his thought that that should be made available to the committee. That was his very definite statement in answer to a question.

Mr. CROLL: I do not recall that. When did he say it?

Mr. Shaw: May we take exactly what he said and try to find out what it means. On the 2nd of November he made a statement and on the 6th of November the minister quoted himself the second time. I read: "It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment, and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the speech from the throne."

Let me just repeat, he says "to enable the proper legislation it is set up to consider". Now, what is that legislation? As I say, the minister has quoted himself from his previous speech. His quotation is found on page 784 of the unrevised Hansard dated November 6, 1951. It is a direct quotation from his speech of November 2.

Mr. CARROLL: I do not care what the minister's speech was. We have the order of reference here.

The CHAIRMAN: Let me put it this way. It is this, as a starting note: the combines commissioner to turn the recommendations of the MacQuarrie Commission into legal form, and as far as the second part is concerned the only time we will have knowledge of the government's proposals in legislation is when the bill is introduced in the House of Commons and has been referred to us, and that has not been done as yet.

Mr. Fulton: What has been referred to us by the Combines Branch is the draft of that legislation.

Mr. Croll: Of course not.

The CHAIRMAN: The draft which the Combines Branch would prepare is probably the same as that provided to the minister to present for cabinet discussion, or for his own use.

Mr. Croll: Any draft the Combines branch would prepare for the minister would be privileged. It is departmental privilege. It is not a matter for us. If it is in order, Mr. Chairman, I will move that the Combines branch be asked to resolve in legal form the recommendations of the MacQuarrie Commission for our consideration.

Mr. BEAUDRY: I will second that.

Mr. Fulton: I move an amendment that along with that draft bill there be laid before the committee the draft bill already prepared by the branch.

Mr. CROLL: Question.

The CHAIRMAN: I will put the amendment first. All in favour of the amendment? Contrary?

The amendment is defeated.

All in favour of the main motion? Contrary?

The motion is carried.

Now, I do not know whether this is in anticipation of the motion but I actually did ask the combines commissioner to prepare such a draft. In any case, I think the next order of business would be to call on Mr. MacDonald, the combines commissioner.

Mr. T. D. MacDonald, Commissioner, Combines Investigation Act.

The Witness: As requested by you, sir, some days ago, I have brought here copies of a draft amendment to the Combines Investigation Act which I think substantially represents the recommendations of the MacQuarrie committee report in legislative form.

The CHAIRMAN: Is it the pleasure of the committee to have this distributed now?

Mr. CROLL: Yes, let us file it.

The Witness: May I also distribute for the convenience of members copies of the Combines Investigation Act?

Mr. THATCHER: May I ask one question before you proceed? Is this legislation that you have just passed out to us any different from the draft Mr. MacDonald prepared earlier for the minister?

The CHAIRMAN: As I understand it we are asking the Combines Commissioner to turn into legal form the recommendations of the MacQuarrie Commission. The only knowledge we will have of the bill which has been approved by the minister will be when we see it in the House of Commons.

Mr. Fulton: Well, why can we not ask the commissioner whether this is the same as the bill he previously drafted?

Mr. Beaudry: Why do you not try to find out what time the minister goes to bed. I object to that.

Mr. Thatcher: Are the government members trying to streamroller this thing through?

The CHAIRMAN: Order, one at a time, please.

Mr. Fulton: I quite agree that the private life of the minister is none of our business but I do suggest that the policy of the government as announced in the speech from the throne is our business and it is to that my question is directed. The interruption by the honourable member who says I want to know what time the minister goes to bed was stupid. We are dealing here with government policy as announced in the speech from the throne, and that announcement made it quite clear there was legislation and that was confirmed

by the remarks Mr. Shaw has quoted—that we were set up to consider appropriate legislation. I am simply asking Mr. MacDonald whether the draft bill before us now is the same as the appropriate legislation previously presented by him?

Mr. Thatcher: Just on a point of order and I think this is a fair question. Every retailer, wholesaler, and manufacturer, is interested in knowing what the government's intentions are as far as the actual legislation is concerned. They are going to want to come down here and make representations. If they know what the government originally intended I think they can make saner representations than they might otherwise do. The fact that you say this is what the government intended is not going to tie you in any way but it will let us know what the government proposes?

Mr. Beaudry: Mr. Chairman, I would submit this, and I hope that Mr. Fulton will not consider it too is stupid. The commissioner of Combines has no authority to speak for the government.

Mr. Fulton: No one is asking him to do that.

Mr. CROLL: On a point of order, there was a motion or an amendment a minute ago that was defeated by this committee—dealing with the same point raised now by Mr. Thatcher and Mr. Fulton. The amendment was defeated and it was decided that we would proceed in this way.

The CHAIRMAN: Every member here, as a member of the House of Commons or of the Senate, has seen many examples where the minister has rightly refused to produce an inter-departmental communication from his staff to himself.

Mr. Thatcher: But also on a point of order, when we start to ask questions of the witness are we going to have back bench government members make the answers—

The CHAIRMAN: If that is your attitude you will find that you are also a back bench member.

Mr. THATCHER: I am an opposition member.

The Chairman: Every member of this committee, whether a senator or a member of parliament and of whatever party has equal rights as a member of this committee.

Mr. Thatcher: If we have equal rights, when we ask questions why cannot we have them answered by the witness.

The CHAIRMAN: You can ask questions of the witness and have them answered if they are in order, but I rule that a question of the kind you asked is out of order.

Mr. Fulton: I move that we ask the Minister of Justice to attend immediately and I will put the question to him?

The Chairman: I think you are also aware that in such a committee as this it is not proper to ask one of our own members to attend. Mr. Garson is a member but he is out of town today. He will be present in future.

Mr. Fulton: Well, I will not press that but I give notice that I wish to ask the minister that question which you have ruled out of order as a question to Mr. MacDonald?

The CHAIRMAN: To the minister the question is perfectly in order but it is out of order to ask it of Mr. MacDonald.

The WITNESS: As I said, this draft that the members of the committee now have before them represents what I believe to be the recommendations of the MacQuarrie committee in legislative form. I have brought them at your request.

Now, I do not know whether you wish me to make some remarks but I do not think there is anything more than that which I can say at the moment.

The CHAIRMAN: In that case, I throw the meeting open to questions by members of the committee. Please raise your hands since there are two rows of you and it is difficult to see you.

The WITNESS: I perhaps should have said that in reading the draft amendment and looking at the recommendations of the MacQuarrie committee it may occur to some of the readers that there are apparent differences between those recommendations and this draft. Now, or at a later time, as you see fit, sir, I would be glad if you wish me to do so, to indicate how I proceeded from the recommendations to the present draft that you have before you.

The CHAIRMAN: I think it would be very helpful if you did that right now.

Bu Mr. Fulton:

Q. Before that is done I think Mr. MacDonald might throw some light on an earlier matter. This is the form my question would take-and it is not covered in the report of the MacQuarrie committee: Why is it necessary to have additional legislation? On what ground is it felt that this present Combines legislation does not deal adequately with the practice under discussion? I refer you particularly to Section (1) (3) which deals with the question of

fixing resale prices.

I would like to know why it is felt necessary? What experience have you had under that section? Have any attempts been made to deal with retail price fixing, and if so, what is the result of those attempts?—A. Mr. Chairman, the Canadian courts have not yet had occasion in any criminal case to adjudicate directly upon the validity of resale price maintenance as an individual and independent policy of a single manufacturer. Of course, resale price maintenance achieved by agreement among manufacturers or among a manufacturer and a group of dealers would ordinarily constitute a combine within the present provisions of the Combines Investigation Act if the restraint of trade resulting therefrom was undue.

Where there is no element of combination by the manufacturer with other manufacturers or with a group of dealers, and where his action in fixing or suggesting resale prices is really a unilateral independent action upon his part, then even though the courts have not clearly pronounced upon the problem it does not necessarily follow that the manufacturer's action in fixing or sug-

gesting resale prices is necessarily legal.

Q. "... is necessary legal" or "illegal"?—A. Legal. In each case consideration would have to be given as to whether what was done was by way of arrangement. I stressed that point first-whether it was done by arrangement-and whether it was undue within the meaning of section 498 of the Criminal Code or against the public interest within the meaning of the Combines Investigation Act. Here, such matters might have to be considered as the competition of other similar products which were not price protected, the availability of substitutes, and the extent of the particular manufacturer's control of the market.

Now, I hope you will forgive me for reading this, but I think I can perhaps keep it in more precise form if I do so.

The provisions of the Combines Investigation Act that would come nearest to this question are apparently Section 2(1) (c), (e), (f), and possibly (d). There is no paragraph in Section 498 of the Criminal Code corresponding to Section 2(1) (c) of the Combines Investigation Act but there are provisions similar to (d), (e), and (f). I simply point out that to some extent there are overlapping provisions in those sections.

Looking at paragraph (c) of Section 2(1) of the Combines Investigation Act, we find the words: "fixing a resale price".

If I may interpose, there may be a small question arise upon the particular interpretation of those words in view of the repetition of the word "common" throughout that paragraph.

I will go on and say that this is the question that apparently arises: what would constitute an actual or tacit contract agreement or arrangement within the meaning of Section 2? It might be difficult to spell out any arrangement where the facts were that the manufacturer simply deposited his goods with the retailer and said in effect: these goods are to be sold at such and such a price, and if you do not sell them at such a price I shall not replenish your stock. The distinction has been put in a United States case from which, with your permission, I will read a short paragraph:

The court in this case—it is the Supreme Court of the United States—said:

It seems unnecessary to dwell on the obvious difference between the situation presented when a manufacturer merely indicates his wishes concerning prices and declines to deal with all who fail to observe them, and one where he enters into agreements—whether expressed or implied from a course of dealing or other circumstances—with all customers throughout the different states, which undertake to bind them to observe fixed retail prices. In the first case the manufacturer but exercises his independent discretion concerning his customers and there is no contract or combination which imposes any limitation on the purchaser. In the second, the parties are combined through agreements designed to take away dealers' control of their own affairs and thereby destroy competition and restrain natural flow of trade amongst the states.

I simply refer to that as showing recognition of a difference between the situation where the manufacturer enters into agreements with a customer that the customer will maintain prices, and the situation where he simply fills an order and indicates expressly or by implication that unless prices are adhered to the merchant will have difficulty when he wants to replenish his stock.

Now, going back to the situation where there is a contract to maintain prices, then another question arises as to what is the detriment within the meaning of the present section.

In the ordinary Combines case the court looks for a substantial amount of control of the trade brought about by the Combine itself—that is, by the actual situation that you bring before the tribunal.

In the case of vertical price resale maintenance—since the distinction will be coming up, I assume, from time to time in this committee between a situation in which prices are maintained by one manufacturer down through a chain of his distributors to the retailers, and the other situation where prices are maintained by manufacturers or other suppliers of different products getting together, I would like to mention that those situations have been tagged with the names of "vertical" and "horizontal" respectively, which are perhaps fairly good words to mark the distinction and, with your permission, I will use those expressions.

To continue then, in the case of vertical resale price maintenance, that does not involve different manufacturers but simply one manufacturer working down through the chain of his distributors, the detriment might not be capable of being shown in one particular arrangement but might be found in the cumulative effect of a large number of individual arrangements which are not related in such a manner that they could all be brought into court in the same proceedings.

I would not say, by any means, that no vertical arrangements could be brought within the present application of the Act. I would say that there are

certain such arrangements, which I think would not come within the Act, and others in respect of which it is doubtful that they would come within the Act and that the changes proposed would afford a much surer basis for eliminating them and would affect an area much wider than would be affected by the present section in its most liberal interpretation.

Finally, such an amendment—and I want it understood that I am simply putting this forward by way of explanation of what I consider would be the effect—such an amendment would be a general, current, and authoritative prohibition which would be much more effective than starting to work up, piecemeal, a jurisprudence for the guidance of the commission and business.

In other words, this would seem to be a case where, if the policy be determined against resale price maintenance in its vertical aspect, and I say "If it be determined"—I am not speaking about that policy—but if the policy be determined against resale price maintenance in its vertical aspect, then the present uncertainty of the law is sufficiently great to make it eminently desirable to define that policy or redefine it in explicit terms.

By Mr. Croll:

Q. While you are there, what about the Frosst case—which is one dealing with the vertical arrangement?—A. I am not sure, Colonel Croll, of the exact basis on which the Frosst case is proceeding. There is a further report in this morning's paper which I have not yet seen.

Q. You have not seen the judgment?—A. I have not seen this morning's/

paper on it.

Q. I do not expect you to give an opinion on a newspaper report, but did not the department follow the case?—A. Yes, we do follow the case, Colonel Croll.

Q. You know what is involved—what principle is involved?

Mr. Fulton: Is that the famous 222 case?

The WITNESS: I am not sure of the exact nature of your question.

By Mr. Croll:

Q. Well. my question was merely that you comment on the principle that was involved there, related to what you have told us was the principle involved in the Supreme Court case?—A. I am not sure, sir, that the Frosst case in its present stage at least is of very much or any assistance to us. The action appears to have proceeded on two bases: one, violation of contract, and the other, that the action was contrary to the Combines Investigation Act.

His lordship said there were other effective remedies available; that if it was charged that the defendant company had violated some law related to combines or restraint of trade then action might be taken under the Criminal Code, or complaint might be laid with the commissioner—that is the commissioner of the Combines Investigation Act. According to this report, the court

does not express any views that might assist us.

Q. Perhaps it is unfair this morning. I thought perhaps you were a little closer to the case than it appears. I will wait until they get a copy of the judgment and Mr. MacDonald may make his comments on it at a later date?—A. I do not want to leave the impression that we are not close to these cases; I can assure you we are.

Q. It is unfair to ask you to comment from a press report, but when you see the judgment you will comment? —A. Yes.

Mr. Thatcher: I was going to ask Mr. MacDonald if we can assume this legislation drafted here will make it illegal for firms to send out suggested resale prices—although there is no compulsion involved? That is, can a manufacturer send out suggested resale prices with his merchandise, or will that be illegal also?

The WITNESS: With your permission, Mr Chairman, I would like to cover the answer to Mr. Thatcher's question now, by pointing out to the committee if they wish me to do so, how I proceeded from the recommendations to the draft—because the answer is implicit in that explanation.

By Mr. Fulton:

- Q. As to the necessity of further legislation, I take it from what you have said that the question itself has never been decided in Canadian courts, as to whether the mere practice of resale price fixing is an offense against the present Combines Act; in other words, that technical question has not yet been decided?—A. That is correct.
- Q. Have you conducted any investigation into the separate steps of resale price maintenance under the existing Combines Investigation Act following which you have come to the conclusion that the present law is not sufficient, or is that merely an approach which is hypothetical?—A. No inquiry under the Combines Investigation Act has yet been directed specifically towards that question.
- Q. I notice too that under the Combines Act, as it stands at the moment, not only must you prove a combination as defined by virtue of the appropriate subsection, but you have also to prove that it operates to the detriment or against the interests of the public. That is one of the reasons why you have come to the conclusion, I take it, that the present law would make it difficult to obtain a conviction for resale price maintenance, because I notice that you do not have the same provision in your draft?—A. It is one of the reasons, in this way: that under the present section, when you bring a combine situation before a tribunal—that is, a combine of the nature of a horizontal price fixing arrangement—then the court looks for a substantial measure of control in the trade arising out of that arrangement itself. Now, in the case of resale price maintenance, as the policy of an independent manufacturer, the situation would obviously be considerably different. The detriment might be the accumulative effect of that particular arrangement, plus another particular arrangement, and plus even another particular arrangement, and more particular arrangements that had no immediate relation one to the other; so it would be difficult to bring them into court as part of the first, in order to establish the effect of them.
- Q. You are dealing there with one aspect only of the detriment, that aspect whereby if a practice tends to gather control into one pair of hands that is detrimental to the public, and you are saying in effect that you could not prove it in this case because of the accumulative aspects, the number of agreements. What about other aspects which are detrimental to the public? Is there any other way in which the effect of the practice which is against public interests can be proven, which would enable you to proceed now against resale price maintenance agreements?—A. We are in an area, of course, that has not been passed upon by the courts, so it is really a difficult area to go about in for that reason. It could be argued I have no doubt-along the lines which Mr. Fulton has suggested—that they are detrimental; but you would not have the same firm guidance that you have at the present time from the principles established in connection with combines. The principles would not be entirely the same. I think you understand also that is only one of the reasons why I expressed the opinion that there could be a situation of the vertical kind which would not come within the present section. The other reason would be the doubt as to whether you could establish that it measured up to the requirements of the words: contract, agreement or arrangement.

By Mr. Beaudry:

Q. Would you mind clarifying that point for me, please. Do we understand that the terms of this draft are such as to imply that this will not do as it states and that irrevocable legal presumption of guilt is present? I refer to Mr. Fulton's remarks that the term "has operated or is likely to operate to the detriment or against the interests of the public" has been omitted. So must my conclusion be from that that the very fact of an agreement would constitute a presumption of guilt or of an offense?—A. Mr. Beaudry, it is not a question of a presumption, perhaps, so much. The fact is that the Act—I am sorry—that the draft, does not deal in terms of public detriment as does the present section of the Combines Investigation Act. It simply prohibits the practice.

Q. And to carry this out further, if we should agree that this is the form of legislation which should be implemented, then the very agreement, in a given time, falling under any one of these sections, would in itself constitute

a legal offense?—A. Yes, that is correct.

Q. Thank you.

By Mr. Fulton:

Q. We also understand at the moment that the present legislation has not yet been tried and found wanting?—A. I do not know just how to reply to that question because I want to do it full justice. I said a moment ago that no inquiry had been directed specifically against the situation of vertical resale price maintenance; and that no such situation has come directly before the courts. At the same time, I think that the other part of my answer must be incorporated into my present answer; that is, that in my opinion there are situations which are covered by this draft amendment which would not and could not be reached under the present section.

Q. Yes, and one of the reasons for that—and I am not suggesting that it is the only reason—is that the present section requires you to prove they are detrimental to the public; where as the new section would not require that proof.—A. Yes, but I would prefer to put it this way: that under the present section, the possibility to which you would have to be alive would be that the tribunal might expect you to prove detriment arising out of the neat arrangement, the vertical arrangement alone, which you brought before them.

Q. I quite appreciate your difficulty in answering me and perhaps my question if answered categorically would be that although the department had grave doubts as to the adequacy of the present legislation, it has not been tried before the courts and found wanting with respect to vertical price fixing.—A. It seems to me—and I know that you did not intend it so—that the question carries a little implication that would make an affirmative answer to it not entirely correct.

Q. But I was following as closely as I could what you said.

Hon. Mr. Lambert: All these discussions in connection with this draft and the possibilities arising out of it are, in my opinion, entirely suppositious, and based on the development of evidence which is before you and what you may have in mind in the way of preventive legislation. In other words, is there evidence to support this draft, or are we supposed, as a committee, to find that evidence?

The CHAIRMAN: Perhaps you were not here at the beginning, Senator Lambert, when we discussed this draft.

Hon. Mr. Lambert: I heard the preliminary discussion, and I think it would properly clarify the questions which Mr. Fulton has been asking if we were reminded again that this is all suppositious, and that we here as a committee, I suppose, to determine the validity of the evidence which will come up later. This is sort of an indirect approach to this evidence.

The WITNESS: I think that is a fair statement. In other words, Mr. Fulton and I have been discussing hypothetical questions.

By Mr. Fulton:

Q. Not only that. I have been asking: what has been the experience under the present legislation? That is something which concerns me and I think it is a fair statement to say that it has not yet, with respect to resale price maintenance agreements, been tried in the courts and found wanting.—A. Might I put my answer beside your summation?

Q. Yes.—A. Let me say this—perhaps repeating what I have already said—that no inquiry under the Act has been directed specifically to a situation of independent price maintenance itself, firstly; and secondly, that problem has

not come before any court directly in any criminal prosecution.

The Chairman: I think what the committee would like to have the witness do is to state the procedure by which he translated these two recommendations into this draft. Mr. Beaudry asked to speak before and I decided that we would not have time to hear Mr. MacDonald if he did so. However, I shall call on Mr. Beaudry and then Mr. MacDonald, and then, if we have time, we can return to the general questions. Mr. Beaudry?

By Mr. Beaudry:

- Q. Mr. MacDonald, this constitutes your normal legal conclusion, I assume, following the conclusions of the MacQuarrie report? In other words, the MacQuarrie report, if implemented by legislation in keeping entirely with the conclusions of the report, would normally translate itself into these legal terms?—A. That is correct; this is a drafting exercise.
- Q. Yes, without making them binding on anyone. I am merely trying to clarify this in my own mind. Would you say this: that perhaps this is a series of conclusions which, if carried in some cases a bit farther, might prove a working state of affairs in this country?—A. Now, Mr. Beaudry, you have taken me from the position in which I came here this morning. The chairman requested that these recommendations be translated into legislative form; but you are taking me into a field of policy.
 - Q. Very well. Let me reword my question then.

Mr. Fulton: Going back to my question, Mr. Chairman.

The CHAIRMAN: Would it not be more helpful if we could have a statement of the process by which he changed the recommendations into this draft?

Mr. Beaudry: Very well, provided you will allow me to speak after that.

The CHAIRMAN: You shall have the first opportunity to ask your questions, following Mr. MacDonald.

The WITNESS: Going to page 21 of the MacQuarrie committee's report, the recommendations were as follows:

The committee, therefore, recommends that it should be made an offence for a manufacturer or other supplier:

- 1. To recommend or prescribe minimum resale prices for his products;
- 2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum resale prices.

Now the committee went on to say this:

. . . that the committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum. It follows that suppliers would be free to suggest and enforce maximum resale prices. It should not be overlooked that the fixing of a specific resale price unavoidably involves the fixing of a minimum price. It is

useful to compare these recommendations with the British proposal which reads as follows:

The Government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

Then the MacQuarrie report goes on and says: and I am paraphrasing—they do not go as far as the British proposals:

While in the legislation which is contemplated in the United Kingdom a manufacturer will not be entitled to mention any price, unless it is clearly indicated that it is a maximum, it would still be possible, in the framework of our proposals, to indicate a maximum or other price and to issue price-lists, provided that it is made clear that the price mentioned is not recommended or prescribed by the manufacturer as a minimum.

The committee is not prepared to recommend action so drastic that it would interfere with established practices of issuing list prices. It is of the opinion that it will be sufficient to prohibit the recommendation, prescription or enforcement of *minimum* resale prices. If all list prices were to be made enforced maximum prices we think it not improbable that the results would be merely higher list prices.

Now, the committee therefore recommended that the prescribing of minimum prices be prohibited, and when recommending that minimum prices be prohibited, it indicated that it was not recommending a prohibition against the indicating of particular prices.

The committee was apparently concerned with not interfering with the policy of issuing list prices so long as the issuing of those list prices did not amount to a prescribing or a recommendation. So they drew a line which, for their purposes I think can be followed, between a recommendation and an indication.

Now, when you come to get that into legislative form, well, I had some difficulty in translating that position, which in a report you can follow, into drafting language. So you will notice that in this draft the words used are "require or induce", because it seemed to me to be the practical line between the situation which the MacQuarrie committee wished to let alone and the situation which it wished to rule against would be indicated by the word "induce".

That is, if there were no inducement and a company only indicated resale prices, then that would fall on the side which the committee was prepared to leave alone. On the other hand, if the mentioning of price were accompanied by any inducement to the effect, for instance, that if you follow out these prices you will likely have your stocks replenished, and the chances are it will be difficult to do so otherwise—

By Mr. Fulton:

Q. Or get a trade discount?—A. Yes, or get a trade discount—that would fall on the other side. In other words—I do not know whether I am clarifying this for you or whether I am confusing you on it—I resolved the distinction between the word "recommend" and the word "indicate", to which the committee attached different meanings, one being harmless and the other being harmful, by using as an expedient the word "induce" in the draft.

Now, maximum prices are all right. To set maximum prices was not reported against and was not recommended against in the report, so it does not, of course, carry into the draft.

Subsection 3 of the draft was intended to carry out the second part of the recommendations which is complementary to the first: that since you cannot recommend or prescribe minimum prices, then neither can you refuse to deal with a person who refuses to maintain minimum prices. And subsections 5 and 6 and section 2 are to assimilate the situation to a combines situation under the present Act for the purposes of investigation and, if necessary, prosecution.

The CHAIRMAN: I take it that concludes your statement?

The WITNESS: Yes, that concludes my statement, Mr. Chairman.

The CHAIRMAN: Very well, Mr. Beaudry, you are first.

By Mr. Beaudry:

Q. Mr. MacDonald, I refer to your proposed draft and to the committee's report which states, by the way—and it should not be overlooked—that the fixing of specific retail prices involves the fixing of minimum prices, and that the manufacturer will not be entitled to mention any price unless it is clearly indicated that it is a maximum, and that it would still be possible within the framework of our proposal to indicate a maximum price, provided that it is made clear that the price mentioned is not recommended or prescribed by the manufacturer as a minimum. I return to my original question which I would like the committee to understand as not necessarily committing you in the form in which I will word my question. It is merely because of my lack of legal practice.

Mr. CROLL: Or training!

Mr. Beaudry: Well, training and practice. No, just practice. May I conclude that this draft covers more than would normally be reasonable. In other words, this draft creates offences where in effect there would be no offence; where in effect price fixing would not be to the detriment of the public. But I will go further.

Mr. CROLL: No, no. That is the question.

The CHAIRMAN: I do not want to interfere at this point because we have heard so little evidence. But I would suggest that this morning the question is whether or not Mr. MacDonald has translated the recommendations of the committee into this draft.

Mr. Beaudry: I want it to be very clear in my mind what the legislation emphasizes.

Mr. Fulton: Is that not the whole question which is before the committee?

The CHAIRMAN: I agree with you, Mr. Fulton.

Mr. Fulton: I mean, the question before the committee is to consider the report of the MacQuarrie Commission which said that resale price maintenance is ipso facto bad.

Mr. Beaudry: We are questioning the Commissioner of Combines, with his experience, in connection with this draft.

The Chairman: My point is that as far as the MacQuarrie Commission is concerned, whatever they have recommended or not recommended is certainly there. At the moment, I think our point with Mr. MacDonald is whether he has accurately translated these recommendations into this draft. And when we get through with that problem, we can explore other offences.

Mr. BEAUDRY: I am assuming that it is.

The CHAIRMAN: Has any other member any questions as to whether this draft accurately reflects the recommendations?

Mr. Beaudry: Mr. Chairman, what I am driving at is this: assuming that it is—and I am taking it for granted that it is, unless Mr. MacDonald says

that it is not-my submission will be this: does not the MacQuarrie report which we are studying and which we shall use as a basis for eventual legislation -does not this report go so far as to make offences or to suggest that it be considered an offence to do certain things which in themselves are not

detrimental to the public interest?

Let me suggest this to you, Mr. MacDonald, that should we adopt the conclusions of the report as they are, and as they are available and implemented here in the study which you have given us, that the first group of corporations which I would submit to you for your consideration would be that of the newspapers in Canada, because they definitely would fall under this proviso with respect to the fixing of specific resale prices, the fixing of minimum prices, where it says: it is further directed, and it is made clear, that price fixing is not recommended, or the prescribing by the manufacturers of a minimum price. And I fail to see how the daily newspapers can put 5 cents or 7 cents on their copies as a price without necessarily recommending it.

Mr. THATCHER: But they can put up their own prices, can they not?

The CHAIRMAN: Mr. Thatcher, you are committing the very offence which you complained about earlier. Let Mr. Beaudry's question be answered if the witness can answer it, or if he is competent to answer it.

Mr. Beaudry: And I submit that the daily newspapers or the weekly newspapers would definitely come under this Act, because that offence is created by them every day in the week.

Mr. CROLL: Why?

Mr. Beaudry: Because they are resold through other dealers or retailers to whom they would fix the prices. The newspapers put on their banners what their prices are.

The CHAIRMAN: We are speaking about things with respect to which we have not got definite knowledge. But if you feel that there is a wish, when we come to call witnesses, it might be proper to call the newspaper publishers.

Mr. Beaudry: I merely direct attention to the point. However, I am in the hands of the chairman. It may be that perhaps this report goes farther than it would be wise to legislate upon.

The CHAIRMAN: That is the very point of this committee. Having got this draft, we shall hear witnesses and say what the impact of it will be.

By Mr. Thatcher:

- Q. I would like to ask this: can we take it from this legislation that suggested retail prices in the future are not contrary to this law? It is quite all right for a manufacturer to send out suggested prices just so long as there is no compulsion.—A. As long, Mr. Thatcher, as they are not required or induced; I mean not required to be maintained, and as long as there is no inducement to maintain them.
- Q. In my experience in business,—such little experience as I have had,— I always found that many of these resale prices are only suggested prices. Would not that mean that this proposed resale maintenance legislation is very watered down because there are going to be so few goods to which it will apply? If manufacturers and wholesalers can sell and suggest resale prices, even if there is no compulsion, there are so many ways, whereby they can suddenly find reasons, it may be, such as that the goods are short, or they can find that they are not going to send them? It seems to me that the whole effect of the legislation is going to be much weaker than it is in Britain, and I do not see how it can be made effective if they are still allowed to suggest resale prices.—A. If there is no requirement, no formal requirement to maintain those prices, and if there is no inducement to maintain those prices, then I suppose your question really raises the difficulty of proof.

- Q. Yes, exactly. How are you going to prove that if suddenly a manufacturer does not ship merchandise, or if one of his shippers sends it to the wrong place, because the price has not been maintained? I do not see how this is going to be possible unless you add the clause which is also in print. You just told us that in Britain they are not allowed to send out suggested prices at all, not maximum prices.—A. No, minimum prices.
 - Q. You say minimum prices?—A. Yes.
- Q. Why did you not think——A. It seems to me, Mr. Thatcher, that the position would not be as vulnerable there as your question suggests it might be. Of course, it is true that in an individual case it might be very difficult to straighten out your facts so as to say whether the goods had been discontinued and the merchant cut off because he had not maintained the prices, or for some other reasons such as the manufacturer might give. But over a course of practice, it seems to me that you could establish a true cause for the discontinuing. That is, if the manufacturer does so in one case, very well, it may be impossible to find out just what were the real motivations behind it. But if that manufacturer does it again and again, it seems to me that it is going to be difficult for him to fail to set up a pattern of behaviour which is going to convince a court that his real motive was to secure the maintenance of prices rather than because he thought that a man's credit was not good, or because he was in short supply with respect to goods, or for some such reason that he might give.
- Q. It would certainly seem that the fear which many had about this legislation would not be nearly as clear if suggested resale prices are permitted.

Mr. Shaw: It occurs to me, Mr. Chairman, that probably we have not got the proof this morning. We have before us the conclusions and recommendations of the MacQuarrie Committee. I understood that we were here to pass judgment on those recommendations. Here we have them before us. And we have asked Mr. MacDonald to draft legislation which carries out the intent of those recommendations. We are not debating on the point of whether the recommendations are good or bad. So it occurs to me that this type of debate should follow the hearing of evidence.

The CHAIRMAN: I am grateful to you, Mr. Shaw. That is my idea exactly.

Mr. Shaw: We will be going far afield if we do not hold to the purpose of this meeting.

The Chairman: This translation of the recommendations into legislative form should be a guide to us with respect to all the witnesses who may come before us. And if Mr. Beaudry so wishes, and if the steering committee agrees, I suppose that the industries which he thinks follow this practice can be examined by us, in the light of the legislated draft of legislation which Mr. MacDonald has prepared.

By Mr. Fulton:

- Q. I would like to ask Mr. MacDonald a question, going back to the discussion which I think was not concluded, that it is necessary to have this legislation. I understand that Mr. MacDonald outlined what he considered would be the difficulty in proving a combine in the case of a vertical price fixing. I can see that, in some cases: But, Mr. MacDonald, let me put this case before you: if it is to be assumed to be a bad practice, as we are now assuming, on the basis of the MacQuarrie report, then why is it not possible under the present legislation, why is it not possible under the provisions of the present legislation? I refer now to section 2 of the Combines Investigation Act as it now stands, which reads as follows:
 - 2. In this Act, unless the context otherwise requires,

(1) "Combine" means a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of...

And I now read paragraph (c) as follows:

(c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or...

There are other subsections, but I refer to this one particularly for the purpose of this discussion.

The CHAIRMAN: Mr. Fulton, for the purpose of the record, would you conclude with the final paragraph, please?

Mr. Fulton: Yes, Mr. Chairman. It concludes:

...or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others.

At first glance, it would seem to me at any rate that that clearly covers the case of resale price maintenance, because of that subsection (c); but you have pointed out the difficulty where you are dealing with a practice between the manufacturer and the retailer. He does it by way of a suggestion rather than by a joint actual agreement; and the suggestion may take the form which you yourself have pointed out, with a threat that if you do not maintain this price, you will not get any new goods.

You have also said that you have not had any investigation directed exclusively or even mainly to the question of whether or not this legislation is in fact adequate to deal with the practice of resale price maintenance. But what about the case of a manufacturer who does not supply his retailer direct, but who supplies him through a distributor? I have in mind any one of several companies, but I shall not name any industry. They would be well known to all of us who are here. There are many industries where the manufacturer never deals directly with the retailer but rather, through a dealer; yet there are no threats. The resale price is fixed and maintained, and the mark-ups are fixed and maintained, but there are not required certainly more than two parties, yet you have to have three. Have you not considered, or have you found anything which leads you to conclude that you could not prove a combination which was detrimental to the interest of the public under the present legislation, under such a situation?—A. I am not sure that that carries the situation further than the simple relationship between the manufacturer and the retailer, because it seems to me that the pattern is the same. You must have something to measure up to an arrangement or contract or agreement. You may have a manufacturer saying to the dealer—

Hon. Mr. Fogo: Could you not have a series of unilateral actions?

Mr. Fulton: That would amount to a tacit arrangement.

The CHAIRMAN: Mr. Fulton is questioning the witness, Senator Fogo.

Hon. Mr. Fogo: Pardon me!

The WITNESS: The manufacturer would deal with the dealer on practically the same terms as he deals with the retailer. He would say to him: You buy these goods from me for such and such a price and this is the resale price which is usual, or which I expect to be maintained; and this is the price which is usual for the retailers to maintain. The dealer is in much the same position as the retailer and he takes the goods, and he passes them on to the retailer with no firmer arrangement or agreement or contract.

By Mr. Fulton:

- Q. These are not unilateral cases. Here we have a case where a manufacturer issues a retail price list. Now then, that can only be implemented when his goods are distributed through a distributor. They go direct to the retailer. Yet he issues a retail price list. This price list—there must be some tacit arrangement or agreement or contract between the manufacturer and the distributor, or if not between the distributor and the retailer. So it would seem to me to make it impossible to regard that as a series of unilateral acts. But it does seem to me obvious, whether it be explicit or tacit, it is an agreement involving two or more persons, by the very fact you have got two or more persons involved. Yet the manufacturer issues a retail list.—A. I see your point clearly, Mr. Fulton, and I think that is a somewhat stronger case than the simple case between the manufacturer and the retailer. withstanding that, it seems to me that there is a very considerable doubt as to whether that situation cannot be passed off on the basis of unilateral action from the manufacturer to the distributor, and the distributor to the retailer, so as to avoid bringing themselves into a situation which under the Act would amount to an arrangement among them. If you take the case of a distributor, and you tax him as operating under this arrangement—of course, this is to a certain extent theorizing—he may say: Well, I have no desire to maintain these prices. I did not make any arrangement, agreement or contract to do so. But I did know that if I did not pass these goods on at the prices which appear in the price list of the manufacturer, though the manufacturer said nothing about it I would in fact have difficulty in replenishing my stock. Therefore I thought the course of discretion for me would be to put those prices into effect. But I did not make any arrangement with the manufacturer to do so and I never discussed the question of price maintenance; the list simply came out showing the prices. And he will no doubt say too: I thought those prices were reasonable prices so I passed them on with the hope that the retailer does the same thing. Well, in some cases, there would be a straining of credulity a little—
- Q. I think you are straining it pretty far.—A. You will realize the difficulties you are under, particularly in conducting a criminal proceeding, to show that those people come under an arrangement agreement or contract within the Act.
- Q. I find it difficult to understand and I am surprised that you have not actually introduced some investigation into industries where the establishment of a price on the goods was carried on in order to find out whether it was felt to be wrong or detrimental to the public interest.—A. In reply to that, let me say, in the first place that we have many fields of inquiry open to us where the lines of jurisprudence have been clearly or more clearly laid down, and in which it would appear that our efforts were more likely to result in successful proceedings; and in the second place, when this matter was brought up by the Royal Commission on Prices, they recommended a further study be made of it. And then, early in 1950 the MacQuarrie committee was set up and the matter was within their terms of reference and they expressly singled it out to ask for representations. So from that time on it did not seem to be appropriate to be exploring new fields, particularly when we had lots of other fields that were pretty well covered by the established jurisprudence.

By Mr. Croll:

Q. Will you not add one step to that, and say that you did not have too much confidence that you would be able to make it work under section (c)?—A. There is a point there, Colonel Croll.

Q. I thought that was what you were trying to say all the morning.

The CHAIRMAN: Now, Senator Fogo, I think you have the floor.

Mr. CROLL: Do you not want to finish with my question?

The Chairman: One reason why we hired counsel—on Tuesday the counsel will support the questioning—was because all the members were not lawyers; and in the past it has been felt that some of the members who were lawyers have taken up a little more of the time than was equitable with their questions. However, Senator Fogo now has the floor.

By Hon. Mr. Fogo:

- Q. Mr. MacDonald has answered the question which I really wanted to ask. It grew out of the discussion with Mr. Fulton. And the other question which was put forward by Mr. Croll is one which we would all like to clear up finally, although I think that Mr. MacDonald has already answered it two or three times. However, I would like to say this: When and if in this draft legislation it contemplates specific fixing of prices being an offence, is there anything here to cover the course of conduct or the series of items to which you referred in your conversation with Mr. Thatcher with respect to the point he raised? You mentioned the fact that this might arise from time to time. I was thinking that the legislation as drafted was directed at specific instances of resale price fixing rather than the course of conduct.—A. The legislation is directed against each specific instance of resale price maintenance; and the only reason, Senator Fogo, that I mentioned the course of conduct was to suggest to Mr. Thatcher that the course of conduct might be of assistance to the court in seeking out the motives in the individual instance.
 - Q. If they could look at it?—A. Yes, if they could look at it. The Chairman: Now, Mr. Croll?

By Mr. Croll:

Q. Let me say first that it is not a reflection in the field of legislation. It does not do what it is intended to do. That is our task and we have to pass on it. Earlier you appeared to say there was a more lucrative field in the Combines Act.—A. I did not say "lucrative field".

Q. No, you did not. "Lucrative" is my word.—A. There were fields in

which the jurisprudence was more firmly established.

Q. Yes, I followed that. Perhaps it would be more lucrative for the government. But I followed from what you said, if I am correct in my assumption, that you did not have too much confidence in dealing with the matter of resale maintenance under subsection (c)?—A. One thing which occurs now in connection with subsection (c) is that if I were engaged in defence work, I would argue, whether with success or not, that when you refer to paragraph (c) as to fixing a common price or resale price, or a common rental or a common cost of storage or transportation, that the governing word to be considered is "common", and that it qualifies "resale price" and covers only such a case as when two or more independent manufacturers or suppliers fix a common resale price.

The CHAIRMAN: Now, Mr. Thatcher?

By Mr. Thatcher:

Q. I think the original MacQuarrie recommendation said something about loss leaders. I read from the last page of the MacQuarrie report as follows:

As to the loss leader device, the committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest.

The committee took the view that there was no emergency about it, however. But are we to assume from this draft resolution that something will be done about the loss leader feature at the present time?—A. I cannot answer your question.

Q. Would not that be something, a part of the MacQuarrie recommendations, that something be done about loss leaders?—A. There is nothing in the MacQuarrie report or recommendation that I could translate into legislative form.

Mr. Fulton: It does not deal with loss leaders?

Mr. THATCHER: But the MacQuarrie recommendations did.

Mr. Dickey: They said it was an important problem, but, for specific reasons which are set out in the report on it, it did not think anything should be done about it at the moment, but that it should receive further study. They did not think that it presented any immediate danger.

Mr. Croll: We may think that it does. In fact, I think that we do.

Mr. Dickey: When the drafter was directed to put the recommendations into the form of a draft bill and leave out something which they say should be left out, he is only doing what he was asked to do.

Mr. Hees: Yes. The whole importance of this inquiry is to decide whether or not retail price maintenance is or is not in the public interest. If we decide that it is in the public interest, then all these discussions about legal and technical aspects are of no avail. But if it is against public policy, then I think these arguments are very apropos. I think we are putting the cart before the horse. I would agree with you that if we can stop these legal arguments now and get on with hearing witnesses, that would seem to me, in my own un-legal way, the proper procedure to follow.

The CHAIRMAN: We have another 15 minutes left. I think Mr. Carroll is next.

By Mr. Carroll:

- Q. As to the original Act, section 2, I presume—is it the presumption of the Justice Department that section (f) applies to all the other sections, for example, fixing a common price or a resale price or a common rental, or a common cost of storage or transportation, that it must be to the detriment and against the interest of the public?—A. Yes, sir.
 - Q. Now then, will that section also apply to your new Act?—A. No sir.
- Q. And that would be your difficulty of course, if it applies to the other and there is some doubt about that very thing, whether section (f) of the Act—I mean of the original Act—does take in all the other sections; for example, the one that I mentioned; and there was some doubt in some of the legal minds even about that. That is with respect to the interpretation of statutes.—A. Yes?
- Q. That this section (f) is something apart altogether from all the other Acts.

Mr. Fulton: I think we should clear that up. You are not referring to subsection (f), but to the general words immediately following subsection (f).

Mr. Carroll: Yes, which follow subsection (f), as I understand it.

The Witness: My view would be that the words at the end: or a merger, trust or monopoly, which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers, or others—

my view is that those words qualify all the other paragraphs (a), (b), (c), (d), (e), and (f).

By Mr. Carroll:

- Q. And that is not within this new Act?—A. That is right.
- Q. Because it would be almost or absolutely impossible to prove in the first instance that the section for fixing a common price would be against the public interest. There is some doubt as to whether it is or is not, and one of the things which you would have to prove clearly under the old Act is that the resale prices were against the public interest. And I am glad that it has been cut out of this, if it is going to help out the public in any way.—A. I may be slipping across the line now into an area where I should not be. But I would assume that the committee in making its report and recommendations was satisfied that it was against the public interest, and therefore did not see the necessity of qualifying it from case to case.
 - Q. Yes.—A. By adding that criterion.
- Q. I suppose the Justice Department thought that this being an amendment to the original Act, in dealing with one specific case, that section (f) has no application to this new Act.—A. Yes, sir. I may not have understood your first question, otherwise I would have replied more precisely to it.

By Mr. Dickey:

- Q. I understand, Mr. MacDonald, that it is your view that the words "has operated or is likely to operate to the detriment or against the interest of the public" in section 2 actually constitute an element of the offence that is to be proved?—A. That is correct.
 - Q. In order to get a conviction under section 2?—A. That is correct.
- Q. Then I take it from the fact that that element is not included in the draft legislation, that it would certainly, at least in your view—that in dealing with this particular practice—either it was not necessary or that it should not be introduced as an element of the offence?—A. It was my opinion that to have inserted them in this draft would not have carried out the recommendations of the committee.
- Q. Your view was that the recommendations of the committee could not be properly put into the form of an amendment to the Combines Act unless you eliminated that element of the offence?—A. Yes.
- Q. Is that fully in accord with our usual approach to legislation of this kind in this sense, that when the Combines Act itself was drafted and enacted, I presume that it was considered by parliament that the combines would be either operated or likely to be operated to the detriment or against the interest of the public? That was the purpose of the legislation. But now, instead of that, it was inserted and intentionally inserted as an element that has to be proved in order to get a conviction.—A. That is right.
- Q. What is the difference in the situation in respect to this particular thing that may be regarded as the proper field of legislation and a proper thing to deal with by legislation? Why should not the same consideration that put those words into the Combines Act itself not dictate the presence of the same or similar provisions in this draft?—A. Now we are getting back to the recommendations of the committee which are merely translated into legislative form in this paper. Perhaps it is relevant in this context to refer to section 498-A. In 498-A certain specific practices are prohibited. You will find them on page 7 of the copies which you have. Now, section 498-A originated about 1935. It does not incorporate expressly as an element of any of the offences mentioned "contrary to the public interest". That is, it assumes that those practices which are mentioned are contrary to the public interest. Indeed, it must make that assumption. It must be taken to make that assumption, for it proceeds on the basis of criminal law.

I can only suggest that what the committee did here, as indicated by their report, was to arrive at the conclusion that the practice in question is contrary to the public interest generally and that it was unnecessary therefore to qualify their recommendation.

My point is this: that it would seem to me that the general combines legislation would proceed from the same assumption as that which underlies the proposal for the type of legislation that is included in this draft.—A. I am not entirely sure about that, Mr. Dickey. This occurs to me: that without such a qualification, the definition of combines in section 2 of the Act, which is punishable under section 32, would be a very far-reaching provision. You see, it would say that any combine, of two or more persons, by way of a tacit or actual contract, agreement or arrangement for fixing prices would be unlawful.

Without the additional criteria, I suggest, that it must be contrary to the public interest, you would bring in everything even down to an arrangement between two merchants operating at the end of a long street, who could not

possibly affect the trade even in their own small district.

Q. Yes, I appreciate that. But I was wondering whether or not there was some element that could be—whether there was anything in the MacQuarrie report that clearly indicated that they were recommending that legislation be drawn in such a way as to eliminate that particular element of the offence which is prescribed under the Combines Act.—A. I would take it to be so from the fact that they did not mention it in their recommendation and from the terms of the discussion in which they led up to it.

By Mr. Fulton:

Q. You mean that they came to the conclusion that it was a monopolistic and harmful practice?—A. Yes, that it was.

The CHAIRMAN: Now, Mr. Croll.

By Mr. Croll:

- Q. Mr. MacDonald, I was just taking a look at section 5. It would appear from the discussion this morning that there will be some difficulty with respect to administrative problems, if this is carried into the law of the land. Are you completely satisfied that sections 16 and 17 of the Act as they stand at present fortify you sufficiently to carry through this new section, if we should pass it?—A. Sections 16 and 17 of the present Act?
- Q. Yes.—A. Yes. I am satisfied that the provisions of this draft sufficiently assimilate resale price maintenance to a combine as to give the commission the power of investigation which it now has, for combines under the Act.
- Q. My point is: Have you got ample powers? Do you think you ample powers in view of this new field you are entering?—A. In an investigation?
- Q. I mean to carry out the intention of the Act. You may find some problem.—A. As far as I can see at the moment, yes.
 - Q. That is all right.

Mr. CARROLL: Do they suggest to you any amendment to this Act?

The CHAIRMAN: There will be plenty of opportunities for suggesting amendments.

By Mr. Fulton:

Q. On the question of the technical steps of the legislation alone, if we proceed and it should eventually be passed, is it your opinion based on your

experience that the penalty of \$25,000 in the case of a corporation is sufficient, or do you not think that there should, in addition, be some penalty which would be imposed on the directors of a corporation?

Mr. CROLL: I do not think that is a question for Mr. MacDonald to answer.

The WITNESS: I think I can answer the question without over-stepping the bounds, Mr. Chairman. As I have said, I was conducting an exercise in drafting; and when I came to that section I simply went to the Combines Investigation Act and took the present provision relating to combines which is contained in the Act. The matter of penalty had to be filled in, so I took this thing right from the Act.

By Mr. Fulton:

Q. I do not want to impose on you or upon the committee if it is felt that this is not the time at which to discuss penalties. But the question of penalties is going to arise. We have with us Mr. MacDonald who can say, speaking from his opinion and experience under the Act, whether the penalty under our Act is adequate or not. I think we should at the same time have a discussion under the Act about penalties.—A. I have two remarks which will, I think, still keep me within the bounds I should be within. In the first place, it would seem to me that the prosecution of a director or of any other person directly concerned in a combine, or an arrangement such as this draft covers, would not be precluded at the present time. In the second place, this question is certainly one of the questions which will receive the earnest attention of the committee which is still studying the legislation generally.

The CHAIRMAN: Are there any further questions?

By Mr. Fulton:

Q. Is that as far as you care to go with respect to your opinion?—A. I do not think I could go farther.

Mr. Fulton: Mr. MacDonald has had a great deal of experience.

Mr. CROLL: Yes, but he is not here to give us his opinions.

Mr. Fulton: I do not think they should be ruled out.

Mr. Croll: That is a matter of government policy, to decide what the penalty is.

Mr. Fulton: I raised the question because penalty is included in the draft legislation; and I was simply asking for assistance in making up my mind. After all, who is better qualified to inform us as to the adequacy of the penalty than the Combines Commissioner?

Mr. CROLL: No. Parliament sets what the penalty should be.

The CHAIRMAN: When we hear all the evidence, and what has happened, after hearing the evidence, then we will decide, not Mr. MacDonald.

Mr. Fulton: I did not expect any suggestion that we are to be precluded from examining into the adequacy or otherwise. I was simply asking Mr. MacDonald for his opinion.

The Witness: I was rather hoping on that point that I would not be asked that question at this particular time because, when it is a thing which is under review by a committee like that, I would prefer not to be put in that position. However, I am in the hands of the chairman and I shall bow to his direction.

The CHAIRMAN: Mr. Thatcher.

By Mr. Thatcher:

Q. I wonder if Mr. MacDonald would tell me the significant point of section 2-A? I do not follow why that is necessary. It reads:

- (2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity
 - (a) At a price specified by the dealer or established by agreement.

The MacQuarrie committee said that they could not prescribe or enforce a minimum price, but that would not mean that they could not sell at that price. How do you translate that?—A. The MacQuarrie committee on page 2 under recommendation No. 2, the third sentence, said as follows:

It should not be overlooked that the fixing of the specific resale price unavoidably involves the fixing of a minimum price.

Now, from the standpoint of writing a report, that is no doubt quite correct, but the fact is that, particularly under the Wartime Prices and Trade Board regulations, a three-way classification has been recognized; maximum price, minimum price, and maximum-minimum or fixed. So, it seemed to me that to translate that idea into the form of legislation, you had to recognize that three-way division and deal specifically with a fixed price and also with a minimum price.

Q. I see.

The CHAIRMAN: If there are no other questions, I might say that we have not had a formal motion to incorporate this draft as an appendix to our proceedings today.

Mr. CROLL: I so move, Mr. Chairman. The CHAIRMAN: All those in favour?

Carried.

Secondly, in connection with counsel and officers of the Combines branch, the counsel are engaged as counsel to the committee; and the Senate chairman has been good enough to secure room 534 in the Senate wing for their use. The telephone number is 2690. And any member of the committee is free to take advantage of the services of the counsel, as soon as we begin receiving briefs.

Hon. Mr. Garson told me to say that the officers of the Combines branch are at the disposal of any member who would like to go to them to discuss any of the points which may trouble him.

Mr. CROLL: I move that we adjourn.

The CHAIRMAN: The next meeting will be on Tuesday morning, November 20, at 10:30 o'clock, when we shall hear from the Canadian Congress of Labour.

The committee is now adjourned.

APPENDIX A

An Act to amend the Combines Investigation Act.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, is amended by adding thereto, immediately after section thirty-seven thereof, the following section:

"Dealer" defined.

37A. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

Resale price maintenance.

- (2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity
- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup specified by the dealer or established by agreement, or
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement,

whether such markup or minimum markup is expressed as a percentage or otherwise.

Refusal to sell or supply goods.

- (3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person
- (a) has refused to resell or to offer for resale the article or commodity
 - (i) at a price specified by the dealer or established by agreement,
 - (ii) at a price not less than a minimum price specified by the dealer or established by agreement,
 - (iii) at a markup specified by the dealer or established by agreement, or
 - (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (b) has resold or offered to resell the article or commodity
 - (i) at a price less than a price or minimum price specified by the dealer or established by agreement, or
 - (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement.

Penalty.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a penalty not exceeding ten thousand dollars or to two years' imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars.

Inquiry.

(5) The Commissioner has authority to institute and conduct an inquiry into all such matters with a view of determining whether this section has been or is being violated and to make a report thereon in writing to the Minister, and for such purposes the Commissioner has all the powers, authority, jurisdiction and duties that are conferred upon him by this Act, including sections sixteen and seventeen, with respect to an inquiry as to whether a combine exists or is being formed.

Report.

- (6) A report of an inquiry under this section shall be dealt with in the same manner as a report of an inquiry or investigation under this Act as to whether a combine exists or is being formed.
- 2. The part of subsection two of section thirty-nine A of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor
 - (2) In a prosecution under section thirty-two or *thirty-seven A* of this Act or under section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code:







HOUSE OF COMMONS

Doc.

CALXY 2 -51654

Fifth Session—Twenty-first Parliament
1951

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 2

TUESDAY, NOVEMBER 20, 1951

WITNESSES:

Dr. Eugene Forsey, Ph.D., Director of Research, and Mr. H. A. Chappell, Acting Secretary-Treasurer, Canadian Congress of Labour.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951



MINUTES OF PROCEEDINGS

NOVEMBER 20, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m., the Joint Chairman, Mr. James Sinclair, M.P., presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Golding, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, MacInnis, Mott, Murray (Oxford), Shaw, Stuart (Charlotte), Thatcher, Welbourn.

In attendance: Dr. Eugene Forsey, Ph.D., Director of Research, and Mr. H. A. Chappell, Acting Secretary-Treasurer, Canadian Congress of Labour.

The Hon. Mr. Garson explained the reasons for the procedure adopted in presenting to the Committee a draft of a proposed bill based on the recommendations contained in the Interim Report of the Committee to Study Combines Legislation.

It was agreed that the Wednesday sittings of the Committee be called for 3.30 o'clock p.m.

Dr. Forsey was called, tabled a submission on behalf of the Canadian Congress of Labour, which is printed as *Appendix A* to this day's proceedings and evidence, and was questioned thereon.

Mr. Chappell was called and questioned.

The witnesses retired.

At 1.05 o'clock p.m. the Committee adjourned until Wednesday, November 21, at 3.30 o'clock p.m.

A. L. BURGESS, Clerk of the Committee.



EVIDENCE

NOVEMBER 20, 1951, 10.30 a.m.

The CHAIRMAN: It is 10.30 and we have a quorum, gentlemen, will you come to order?

Mr. Fulton: On a point of order, before you proceed with the witness this morning I would like to refer to a matter which was discussed at the last meeting and left open for the time when the minister might return and it was a question as to whether the suggested legislation presented to us by Mr. MacDonald at our last meeting was in the same form as the legislation which the government had had under consideration, and you indicated it was recorded on page 15 of our proceedings that to the minister that question is perfectly in order.

As I think it is important since a lot of our discussion will proceed on the basis of the legislation which Mr. MacDonald presented—I think it is important to know it is a matter which was previously considered by the government as outlined in the Speech from the Throne.

I see the minister is here and I would like to ask him that question. I am quite sure Mr. Garson has had the opportunity to see the brief presented by Mr. MacDonald and I would like to ask whether that is the same as the bill which the cabinet was considering and which was mentioned in the Speech from the Throne.

Hon. Mr. Garson: First of all, I think I should apologize for not having been present at the last meeting, but unfortunately I had an appointment in Toronto of some six months' standing and could not possibly avoid keeping it. After I got back I read the *Hansard* report of the proceedings and in particular this question of my hon. friend. I think, if it will not take up too much time I, perhaps, should offer a word or two of explanation as to just what happens in general in regard to the preparation of legislation.

First of all we—and I can take this case as an example—first of all in this case we took the MacQuarrie report to cabinet for consideration as to policy. If as happened here the decision is favourable—that may be even as a tentative position—a sufficient decision to warrant our asking the draftsman to devote a sufficient amount of his time and attention to the preparation of the necessary draft legislation.

Now, that decision goes from myself as a member of cabinet, whose proceedings are not only confidential but secret, back to the department through the deputy minister to the draftsman, who then proceeds to draft what he thinks is appropriate legislation. He may make one or two or half a dozen or more drafts before he is satisfied that he has something that represents a satisfactory statement in legislative form of that policy. Then he sends it back to the deputy who checks it and if he approves of it he sends it to me and I read it and if I am satisfied that that is a correct representation of policy I take it back to the cabinet. If not, we may have one or two or more conferences as officials within the department to make sure that the legislation which we are drafting does actually represent government policy.

Now, all this takes place before the cabinet ever sees the draft at all. Then when it comes before cabinet it is gone through clause by clause and if it is accepted, all well and good. If not, then cabinet may set up a

subcommittee to consider it further, or they may give it to me with certain instructions that certain clauses should perhaps be reconsidered and redrafted in this way, the draft bill goes back either to the subcommittee of cabinet or the Dept. of Justice either in so far as those particular clauses are concerned or until we get a bill which is acceptable in its entirety to the cabinet.

Now, I have citations to this effect if you wish to hear them; but it is very obvious that all of these proceedings being essentially of the nature of cabinet proceedings advised by the confidential advisers of the cabinet are not only confidential but they are secret, and I would be breaking my oath as a cabinet minister if I were to divulge any of them.

In this particular case I have already stated in the House what our position was. It was as set out in the Speech from the Throne—I will not bother quoting it, for I think it is familiar to most of the members—that we had received the report of the MacQuarrie Commission and we had approved of it to the extent that we announced in the Speech from the Throne that we were going to introduce legislation based upon it.

I cannot disclose to you what took place after that with regard to the advice of the law officers and so forth, but I ask you to use your imagination that in line with the procedure which usually takes place in such matters men like Mr. MacDonald, the draftsman, Mr. Varcoe and myself would in all likelihood consider this matter at considerable length, and for that purpose if we acted in accordance with the usual practice, drafts of the legislation would be prepared. Then, while those were being considered, we received from a host of individual merchants, from certain trade associations, from individual manufacturers and from the manufacturers association the representations which have already been referred to in my remarks before the House of Commons. We told these gentlemen that before we reached a decision as to the final form in which legislation emerged as a matter of government policy we would give them an opportunity of being heard so that we would have their viewpoints, not strained through the deliberations of a commission and emerging in the form of a prepared, condensed report, but direct from them; and that we would have representations not only from those who were opposed as they say to resale price maintenance but from those who were in favour of it. We said moreover that having regard to the fact that scarcely any public opinion had been developed in relation to this matter because the proceedings before the MacQuarrie Commission were held confidentially, it would be much more desirable from many standpoints that any representations which the people concerned might wish to make should be made before a parliamentary committee open to the press and the public where other persons could hear them, rather than that these representations should be made to the Government privately.

For that purpose we moved a resolution setting up this committee. Our thought was that we as a government, having clearly announced our government policy in the speech from the throne, would suspend judgment as to the form of the legislation until we have had the advantage of reading—I will hear it myself, but my colleagues will have to read it or will have to get reports from me concerning it—reading the evidence which is given before this committee and also having the benefit of the views of this committee representative of all parties in the House, as to what the committee would consider to be appropriate legislation. Now, I thought that I had tried to make that abundantly clear in my remarks in the House of Commons, and I must say I was quite cast down when I saw that there were certain members of the committee who had apparently misunderstood me; but, in order to justify my position perhaps

I might be permitted, Mr. Chairman, to read what I said. This will be found at page 664 in *Hansard* for November 2, 1951.

In the light of this specific and concrete proposal the government has been strongly urged, by many individual merchants and manufacturers and by executives of several representative industry or trade associations, to afford them an opportunity to present their views to the government or to a parliamentary committee. The government has decided that it ought to accede to this request but that it is preferable from many standpoints that this presentation of views should take place before a joint parliamentary committee open to the public and to the press of Canada in such a way as to make the information which is presented there available to all concerned, including all the members of this House. The joint committee will therefore be directed to consider the MacQuarrie committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon.

My honourable friends will remember that on the day preceding this presentation in the House of Commons Mr. Coldwell raised certain questions. He objected to the fact that we were not appending to the resolution which went on to the committee, the full text of the draft bill. Now, apart from these reasons which I have already indicated to the committee there was another reason why we could not do this. We had considered this as an alternative, but in conferring with the officers of the House of Commons we found that before a bill had been introduced or considered by the House, there was no precedent for the government moving a resolution with the full text of the bill incorporated therein to send such a matter as this to a joint committee of the Senate and the House of Commons. What we might possibly have done, and for which we could have found a precedent going back as far as 1892, was to introduce a bill and carry it through the first and second readings before referring it to such a joint committee. In this event we would ourselves be bound by the principle of the bill, and we would have asked all members of the House to be bound by the principle before we ever heard from anybody at all. This under the circumstances would not seem to make sense. Thus when this objection was taken by Mr. Coldwell, this is what I said, I think this language is quite clear:

Mr. Coldwell asked, "Will the legislation be introduced for study of the House" and Mr. Knowles interjected, "As intimated in the speech from the throne." And I replied:

In reply to my hon, friend's last question, may I say that I would hope that the committee in the early stage of its proceedings would receive from the Department of Justice a draft copy of the bill for consideration along with the report.

That is exactly what has been done here. While being absent I was not a party to it, I must say, but I think it was a very wise move indeed, simply for this reason: I do not know how you gentlemen feel about it, but it has always been my experience if you are considering a policy it is a great deal of help in weighing the merits or demerits of the policy to have a draft bill before you which carries that policy into effect, not in its final form but in draft form; because in my experience the possession of that draft bill illuminates the problem with which the policy is intended to grapple. Our position therefore, gentlemen, is that, cabinet having suspended a consideration of the final form in which a draft bill would be produced until this committee makes its report, there is no draft bill that I could produce even if my oath of secrecy did not prevent me from doing so. But I do not think with all deference

that this is going to embarrass the proceedings of the committee at all. You have here a bill which was introduced by Mr. MacDonald at the last sitting. I can help you to this extent. I do not think that it is exactly the same as any other drafts that have ever been considered in connection with this matter, but I am also prepared to say that in my opinion it is a very fair and competent rendering into legislative form of the recommendation of the committee, and if there were no further evidence coming from the witnesses who are to come before you which would tend to modify your opinion, the passage of the bill which Mr. MacDonald has introduced would, I think, be, in the terms of your resolution, an adequate expression of the report of the MacQuarrie committee. In other words, Mr. MacDonald's draft carries my judgment as a lawyer.

I make this further and final point, that we have here a report from the MacQuarrie Committee which makes two explicit recommendations. Now, I know my hon. friend from Kamloops, who is a lawyer and a man of common

sense, will realize that when you have two simple . . .

Mr. CROLL: What a qualification!

Hon. Mr. Garson: I added the second lest there should be any doubt in the matter . . . the hon. member will realize that when you are dealing with two fairly simple recommendations, once they have been rendered into legislative form in a competent manner, there will not be any fundamental differences between that draft and any drafts that might be brought alternative to it.

Mr. Fulton: I am sure the committee is indebted for the long and thorough explanation of the Minister of Justice, and I think the answer to the question has emerged in the last minute or so, when the minister said that the draft now before us is not the same as any other draft which has ever been considered. That is the question I asked, whether that was the same as the legislation being considered by cabinet, because the question arose out of the passage which the minister referred to when he was asked on November 1 whether we could take it that the resolution contained in Votes and Proceedings for October 31 asking the House to approve the appointment of a committee to consider the interim report on the combines legislation supersedes the intimation in the speech from the throne that we are to consider legislation; and then there is the latter question which he was asked on page 605: will the legislation—referring to the legislation which the government had forecast—be introduced for study of the House, and the minister's reply: "I would hope that the committee in the early stage of its proceedings would receive from the Department of Justice a draft copy of the bill"; all of which questions and answers obviously referred to the bill which was then being considered in parliament. That is why I asked whether the bill which we are now considering, as drafted by Mr. MacDonald, was the same as the one that was considered in cabinet, and the answer we now have is that it was not the same as the one considered in cabinet. That is the point I wanted pointed out.

Hon. Mr. Garson: My hon. friend knows that there is no bill that emerges from the cabinet that has any significance at all until the final draft emerges in its final form as a matter of government policy. All these other preliminaries are merely paper writings or tools which are used in the process of arriving at a final form.

Mr. MacInnis: Might I ask if the draft which was before us on Thursday would be in that same category, that is, something which is not in its final form?

Hon. Mr. Garson: Surely.

Mr. Beaudry: What is specified . . .

The CHAIRMAN: Gentlemen, order. Mr. MacInnis has the floor. Mr. MacInnis?

Mr. Macinnis: My question was: was not the draft which was submitted to us on Thursday merely a draft which has no official sanction behind it?

Hon. Mr. GARSON: That is right, surely. It is a paper writing, a tool of thought in the committee's deliberations made by a very competent man in that field.

Mr. MacInnis: I am not questioning that.

Hon. Mr. GARSON: Yes.

Mr. MacInnis: But the minister did not see it before it was presented here, did he?

Hon. Mr. Garson: No.

Mr. MacInnis: And it has not any authority behind it.

Hon. Mr. GARSON: That is right.

Mr. Thatcher: Is the answer to Mr. Fulton's question to be "yes", "no", or "no answer"?

Mr. Fulton: The answer is "no, it is not the same".

The CHAIRMAN: Mr. Thatcher asked his question of Mr. Garson, not of Mr. Fulton.

Mr. Fulton: Well, government members can get away with it, but not members of the opposition.

The Chairman: Just a minute. We might as well have it out right now. I hope I can preserve order here. At the last meeting, I was quite severe with Mr. Thatcher for such interruptions. When Mr. MacInnis was interrupted I cut off Mr. Beaudry. I would like to be fair. Mr. Garson was asked a question and Mr. Garson can answer it.

Hon. Mr. Garson: My hon. friend from Kamloops who is sometimes quite ingenious in these matters, asked me a question pretty much akin to "when did you stop beating your wife?" He asked me whether the draft which Mr. MacDonald produced before the committee is the same as another draft which does not exist. The reason it does not exist is that during the course of proceedings in the Department of Justice and in the committee's deliberations, you may have 25 drafts of one kind or another at different stages as you proceed with a complicated bill. But the only thing which in any way can be said to reflect government policy is the final decision, the official draft which is going to be introduced as government policy. And I have already, I hope, made it clear that in this particular case when we were in the course of considering the manner in which the report of the MacQuarrie committee could be put into legislative form—we reached that stage where we were requested to hear further representations before we made a final decision on that matter. So for that important reason we did not make any decision on that matter. We came into the House of Commons and announced in the frankest possible manner that we were not going to make it until these presentations had been made before this committee and then, when we had got a copy of the committee's report and a copy of the evidence, we would make it and not before. So what my hon. friend asked me is this: is Mr. MacDonald's draft the same as something else which does not exist? Yes or no? The answer is that there is nothing in the terms of my hon, friend's question with which the MacDonald draft can be compared at all.

Mr. Fleming: Could not the minister sum it up in this way, which I think would be a correct summary: is it a fact that neither he nor the government indicate a policy or take any responsibility for the bill which is printed on pages 34 and 35 of our proceedings?

Hon. Mr. Garson: I am glad that my hon. friend raised the point, and I do not want to take too long in answering. I want to emphasize that the government is not abdicating its responsibility in this matter at all in referring it to this committee for the purpose of hearing representatons and receiving the suggestions of the committee members concerning appropriate amendments. The government could very well have heard these representations in private and embodied them in any matter of legislative policy that it brought forward. It chose not to do so, and the government, while it certainly cannot take any responsibility for the form of this draft which I did not see until I came back from Toronto, let alone any other members of the government—will take complete responsibility after these presentations have been made before the committee and the committee makes its report. In the light of these representations and all other matters, the government will take the responsibility of either adopting what the committee regards as appropriate legislation or, in the light of the committee's report and this evidence, it will draw up appropriate legislation of its own.

Mr. Thatcher: I wonder if the minister would say whether the answer to that is yes or no?

The Chairman: Perhaps we had better get back to how this legislation started. I asked the commissioner of the Combines Investigation Act to bring the recommendations of the MacQuarrie Committee in legislative form before us so we would have some basis with which to start off. I think we have gotten a long way afield from the start of these proceedings. I made that suggestion to the committee and asked them if they wanted it or did not want it and the committee decided they would like to have it as an appendix, and as a basis of operation.

Mr. Fleming: May I raise one other point, briefly. It is about the meetings of this committee. I raised the point at a former hearing—the difficulty of overlapping of meetings. There is another committee meeting at eleven o'clock this morning which regards itself as an important committee. I am referring to the Radio Committee. Have you had any opportunity to confer with them on the matter of meetings so that we can arrange that we do not have an overlapping? I think there are other committees meeting as well.

The Chairman: I did not confer with the Chairman of the Radio Committee but I did meet with the chief government whip. I was told, as I said in the House, that this committee has top priority as the government hopes that we will be able to get this report in before the end of this session. You will be gratified to see that our Hansard is coming out quickly—we are getting it as quickly as we do the Hansard in the House of Commons. I was then told to schedule our meetings at times which would suit us best and they are I think 10.30 on Mondays, Tuesdays, Thursdays, and Fridays. We can decide whether it will be 3.15 or 3.30 on Wednesday—it will depend of course upon progress in the House.

Mr. FLEMING: 3.30 on Wednesday.

The CHAIRMAN: The other major committee which is considering legislation at the moment is the Railway Committee. There is no overlapping in the membership of these two committees although I believe there is some overlapping with this committee and one or two others sitting. If the other committees realize that we have these times they can adjust their times so there will be no overlapping.

Mr. Fleming: The Radio Committee is in a similar plight because they have legislation to deal with too. I was just hoping that if this committee is to have the right of way the chairman of the Radio Committee might see fit to adjust the hours of that committee accordingly. It has not happened this morning and there is a meeting at 11 o'clock. When I go to that committee I might say something about the discussion in this committee this morning.

The CHAIRMAN: Yes.

Mr. CROLL: Mr. Chairman, I have one suggestion. It occurred to me that this committee does not know a great deal about the Combines Investigation Branch. It might be useful to the committee if the Combines Investigation Branch file with the committee some indication as to the number of its personnel, what their duties are and so on, so that we would have some idea as to their duties and capacities to do certain kinds of work.

The CHAIRMAN: Mr. Croll, we had the Combines Commissioner before us at the last meeting and that is what I had hoped he would do but we got so involved in the matter of the proposed legislation that we never got around to actually having him discuss that for the benefit of the committee. We could have him come back here at some convenient time and make a full statement as to the organization of his staff and its functions. He could come back before us as a witness.

Mr. FLEMING: We can call him back at a later date.

The CHAIRMAN: Yes, perhaps we could find some morning when the witness before us does not take up the full time and we might have him called back to fill in the balance of the morning giving us that information.

Hon. Mr. Lambert: Have you any witness to give evidence here today? The Chairman: Oh, yes.

Hon. Mr. LAMBERT: I would suggest that you would keep that separate, if possible, rather than have it in with other material.

The Chairman: Gentlemen of the committee, the first witness to give evidence before us will be a representative of the Canadian Congress of Labour, and I think on behalf of the committee I should express our appreciation of the promptness with which they have come before us. As you know, we all wish to have this committee conclude its proceedings as quickly as possible and get this legislation ready for the House, and it is particularly gratifying, Mr. Mosher, and we are very grateful to you that you are ready to go on this morning. Who is it that you are going to have speak for you, Mr. Mosher?

Mr. Mosher: Dr. Forsey.

The Chairman: We will now ask Dr. Forsey to address the committee. You will notice that I have separated witness and counse! by some distance with the thought that they would have to speak up so that we can all hear what they have to say. Mr. Phelan, our chief counsel will lead the questioning and then, when counsel is through, the witness is available to any member of the committee. Our suggestion when writing to the various witnesses was that they should file their brief without reading it, but if a witness so chose he could give a short summary of the brief before being questioned.

Mr. Beaudry: Mr. Chairman, before questioning Mr. Forsey, might I call your attention to the fact that paragraphs 2 and 3 of the brief before us state—

The CHAIRMAN: Mr. Beaudry, I think it is most unfair to start questioning before the witness has an opportunity to make his statement or counsel completes his cross-examination. Perhaps you could hold up your questioning until counsel is through, Mr. Beaudry.

Mr. Beaudry: Very well, Mr. Chairman.

Dr. Eugene A. Forsey, Ph.D., Research Director Canadian Congress of Labour, called:

The WITNESS: Mr. Chairman and members of the committee, I understand that your wish was to begin with a short summary of the brief which you have in your hands. I think that I can do that in a very few moments. First of all, we regret that the shortness of time we had to prepare this document makes it less adequate than we should like it to be. Second, I want to make it very clear that the congress does not regard this legislation as of vast importance or likely to be of enormous effect upon the cost of living. We indeed feel that the Combines Investigation Act as a whole is not an adequate way of dealing either with monopoly or high prices. That is the position we have taken many times and we adhere to it. We are inclined to feel that the same is true of this particular proposal to an even greater extent and I ventured to put in the brief a quotation from Dr. Johnson who compared a certain thing to, "setting up a farthing candle at Dover to give light at Calais". However, our attitude is that this is the only new measure of legislation, rather the proposal which was embodied in the speech from the throne was the only new measure of legislation that the government proposed to introduce to meet the problem of high or rising prices, and our attitude is that we are thankful for small mercies.

The brief goes on to point out that re-sale price maintenance is an old story in Canada. It is referred to in the report on the Proprietary Articles Trade Association, the Tobacco Combine report, the Dental Supplies Combine report, the Optical Goods Combine Report, the Western Baking Industry report and the report on the match combine. In four of these, the P.A.T.A. report, the tobacco report, the optical goods report and the matches report, it was made clear that this problem, this special problem of re-sale price maintenance by individual manufacturers, was a prominent issue. Of course, the problem of re-sale price maintenance by an association is something that is, I understand, already covered by the Act, but the problem of re-sale price maintenance by a particular manufacturer is not covered; and that, as I understand it, is the problem which is specifically before you. brief quotes from the remarks from the Royal Commission on prices in 1949, on this subject; and refers, also, to the report of the Royal Commission on Price Spreads in 1935. The substance of our brief, is this; first, that re-sale price maintenance restricts competition and therefore on the basis of the public policy embodied in the Combines Investigation Act is suspect, and that the burden of proof rests on those who defend that practice. A very large part of our brief is taken up by quotations from the late British government's white paper statement on re-sale price maintenance, whose arguments in the main we adopt as our own. The statement says first of all that the cost of trading varies considerably from one shop to another, that there are different services provided, and that they should be reflected in different prices; that it is no answer to say that even with retail price maintenance merchants can compete in services, in offering services that the consumer does not want and would prefer not to have and not to have to pay for; that the effect of re-sale price maintenance is to limit competition among merchants, to slow down improvements in the service offered by retail merchants because the efficient merchant is debarred from cutting the prices of these articles which are covered by re-sale price maintenance and therefore there is no incentive to the other merchant to imitate the efficiency which he has been able to achieve.

The other objection to the whole thing is that the prices which are fixed are fixed entirely by private persons according to a system of what you might call private law of their own and not subject at the present time to any

public regulation. The British statement goes on to deal with a number of answers to the position that it takes up. The first answer might be summed up I think in the classic response of the fox hunter to the protest against fox hunting; "the fox likes it." The defence, astonishing as it may appear, is that housewives like fixed retail prices because they know what they will have to pay and don't have to travel all over the place to find out what the thing costs. That appears to me inherently improbable. I agree entirely with the statement made by the British government on the subject, that it seems unlikely that in fact the housewives would prefer fixed prices to a system where lower prices might be available, where goods might be available at lower prices in one shop than in another. It is very unlikely that if things are available at a \$1 one shop and 90 cents in another the housewife will complain that this confuses her and she would like to have it all the same so she would know where she was, what she had to pay.

Next there is the argument that branding and fixed prices must necessarily go together. That just is not so. Then there is the further defence that if there were not fixed retail prices the consumer would be doubtful about the quality of a branded product, if it was offered for sale at one place at 90 cents and at another for \$1.00. But the answer to that is, of course, that any consumer would know perfectly well that if you have two articles put up by the same manufacturer, in the same package, the consumer knows they are the same. There is no real danger that he will worry about the quality of the article which is made available to him at the lower price because the price is not fixed by the manufacturer but is determined by the retailer himself in accordance with his own costs.

I do not think it is necessary to go into all the arguments which were advanced in defence of this practice but I do want to mention two others which are somtimes put forward. One is that the retail price, the fixed re-sale price, has been below what the manufacturer or the retailer might have exacted or extorted from the customer, that the traffic would have borne more. The answer to that, I think, is that in the legislation which was recommended by the MacQuarrie committee there was absolutely nothing to prevent the manufacturer from fixing a maximum re-sale price if he wants to, that the retailer might not charge more than that. Nobody is going to object to that, certainly the MacQuarrie committee could not, and, certainly, we do not object to it. What we do object to is the fixing of the minimum retail price so the retailer cannot sell below that, no matter what his costs may be.

The other point is the loss leader, and I think the answer to that is that the loss leader is not particularly important or common now. In general it is rather a feature of a time when merchants have an abundance of goods on their shelves which they must get rid of; but at a time like the present when we are in a period of relatively high employment and high income the incentive to loss leaders is relatively very small. Furthermore, of course the loss leader, as the British statement points out, really presupposes a background of numerous fixed prices, and unless you have that background against which a loss leader stands out as a strong inducement to a consumer the loss leader is not likely to be very prominent.

In our brief we refer to the buying spree which took place in New York last summer after the Supreme Court of the United States declared that the "non-signer" clause in the "fair trade" Act was invalid, and a very large number of articles were sold in Macy's, particularly, I think, at varying percentages below the fixed prices which had formerly prevailed.

And then, I should like to read the last paragraph of our brief which puts

our position clearly:

"The Government and Parliament of Canada have apparently set their faces like flint against public control of prices. Yet they have tolerated for years private control of prices by individual firms, "behind closed doors", as the British Statement says, "and without any supervision by the courts or by Parliament". The Congress thinks it is time this paradox was ended. If it can't be ended by imposing public price control in the public interest, let it be ended by stopping, or trying to stop, private price control in the private interest. If we must have "free enterprise", let us have it really free and really enterprising, for retailers and consumers, not just for manufacturers. The Congress reiterates that it is not very sanguine about the effectiveness of attempts to restore competition and make the "free economy" really free. But that seems to be what the people want. Anyhow, they voted for it. Surely it is high time to let them have it, or at least to try".

The CHAIRMAN: Thank you, Mr. Forsey.

By Mr. Phelan:

Q. Mr. Forsey, it might be of interest to the committee if they had some information as to your personal attainments and experience in economic problems.—A. Well, my present position, which I have held since 1942, is Director of Research for the Canadian Congress of Labour. For a year before that I was on a Guggenheim Fellowship at Harvard. For twelve years before that I was teaching in the Department of Economics and Political Science at McGill University. I took my B.A. from McGill in Economics and Political Science and English. Later I took my M.A. in Economics and Political Science at the same institution, and then my B.A. at Oxford in 1928, in Philosophy, Politics and Economics. Later on I got my Ph.D. at McGill in Political Science.

Q. So that on the theoretical aspect of economics you would have some considerable knowledge?-A. Oh, I would not say a great deal, but some, at

any rate.

Q. All right. And now, the Canadian Congress of Labour have about how many members?—A. Somewhere between, I should say 325,000 and 350,000;

something in that neighbourhood.

- Q. And are you able to tell the committee how far the brief sets forth the views of your members? Does it represent the views of your members?-A. Well, yes, I think I can say pretty positively that it does. The brief does represent the general opinion of our membership; first of all, because we had already made in very short form a similar statement of policy before the MacQuarrie committee; and, second, only last week, a week ago yesterday, our executive council met here in Ottawa and adopted a resolution setting forth substantially, although in briefer terms, substantially the conditions which we have just presented to this committee. The executive council is our highest legislative and administrative body between conventions. It is composed, first of all, of an executive committee, the inner core or cabinet, perhaps you might call it, which has 14 members elected by the convention; and, in addition to that, roughly 30 other members belonging to the executive council who are chosen by the various affiliated unions. For example the steel workers are represented by delegates to the executive council chosen by the steel workers; the rubber workers who would elect a delegate, the packing house workers and others unions in the same way.
- Q. So we may take it that the views therein set forth represent with fair accuracy the views of your members?—A. Yes, I think so. We have at any rate had no unfortunate repercussions from the submission we made to the MacQuarrie committee. I think it is safe to say that the executive council is

a representative body, representative of all the affiliated unions such as I have mentioned, and it represents substantially the viewpoint of the membership.

Q. And, I take it that this 350,000 membership are substantially all the members of the consumer class?—A. Oh well, hardly that—no.

Q. What part of that 350,000 would be members of the consumer class?—A. Oh, I misunderstood you. Of course they are all consumers.

Q. You think they would all be members of the consumer class?—A. Yes, and their wives and children also.

Q. Are there any other nation wide organizations of labour having somewhat similar aims and objects to your own?—A. Yes, sir, there are several.

Q. Would you just name them?—A. First of all, there is the Trades and Labor Congress of Canada, the oldest and largest central labour organization in Canada.

Q. Approximately what is its membership?—A. According to my recollection it would be around 100,000 more than ours.

Q. So that would bring it up to about 450,000?—A. 450,000 to 475,000.

Q. And their membership would also be members of the consumer class?—A. Yes.

Q. And, next, we have the Canadian Congress of Labour—the Trades and Labor Congress; is there anyone else?—A. There is also the Canadian and Catholic Confederation of Labour, which is almost entirely, if not entirely, within the province of Quebec, and mainly French-Canadian.

Q. And their membership would be what?—A. It would be around 90,000.

Q. Around 90,000. Is there anyone else?—A. In addition to that there is a body known as the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods, which combines two organizations which are affiliated with the Trades and Labor Congress of Canada, and also four unaffiliated railway labour organizations; the conductors, the trainmen, the locomotive engineers, and the locomotive firemen and enginemen.

Q. I see, and do those comprise—.—A. They are known as the Big Four and the affiliated organizations have roughly a membership of 40,000.

Q. Now, that is all the national organizations, is it?—A. Yes. There are a certain number of unaffiliated international unions, most of them organizations which have been thrown out of our congress as being communist-dominated. They have a membership of around 40,000 or 50,000.

Q. I observed that in one of your opening remarks, rather one of your opening remarks was that this question or problem of re-sale price maintenance might not be of vast importance or have any substantial effect on the cost of living. Have you any statistical information for the committee that would support that conclusion, or otherwise?—A. No, sir, I am sorry to say we have not. If we had had more time I should have made an effort to get that through our organizations, but in the time available it was frankly quite impossible, even if our unions had been admirably prompt in their replies, to prepare any material on that point.

Q. Have you any views at all as to the extent of retail price maintenance and its result on the volume of sales throughout Canada?—A. I would not even hazard a guess on that. I simply do not know, and whatever I would say would be worth nothing.

Q. I have heard it said that the proportion of goods affected would be somewhere in the vicinity of 30 per cent. Have you any comment to make on that?—A. That is in the British report?

Q. Yes, over there.—A. I do not know whether that would have any bearing on the situation here, conditions are so different.

Q. So then we are without any information at all as to the effect in percentage of the total cost of this practice, we have no information at all?—A. As

far as we are concerned, yes. I am sorry about that, but if I had put in anything about that I would merely have been guessing. You see, we have not had

time to collect any evidence from our organizations.

Q. Do you consider the practice a substantial part of commercial life, or an unsubstantial part of it?—A. I should think it is a fairly substantial part in certain lines of trade. I suspect that it is. I suspect it is still going on to some degree at least.

Q. You refer in your brief to a number of prosecutions under the Combines Act, I think you refer to them by name—at least you refer to one of them by name.—A. I referred to a number of reports, I do not think I referred specifi-

cally to the prosecutions.

Q. What was Mr. MacDonald's expression of two days ago, that these prosecutions or investigations were concerned with the horizontal aspect of price control?—A. Yes, and that is what they were essentially, some of them. But this other aspect came up in connection with the four which I specifically mentioned, the Proprietary Articles Trade Association report, the tobacco report, the optical report, and the match report. There was a very apparent vertical action by individual manufacturers. In the tobacco report it was the Imperial Tobacco Company, and in the Proprietary Articles Trades Association it was Wampole's and Colgate's; in optical goods it was American Optical, in matches it was Eddy Match. They were all referred to as having individually and specifically attempted with fair success to control retail prices.

Q. Vertically though.—A. Yes.

Q. Then I have one other question. One of the suggestions made in support of the maintenance of retail price practice is that unlimited competition between retail distributors has an undesirable effect on their interests. Have you any comment to make on that for the committee?-A. Well, the only thing I can say about that is that I think it may in some instances be undesirable. I would not want to put it in general terms, but if that is so, then it should in our judgment be dealt with by substantive legislation; some kind of public control, through parliament if parliament in its wisdom sees fit. It should not be a subject of private control by private individuals or corporations simply in their own interests.

Q. How is price control exercised under a price maintenance system, if it is exercised?-A. Well, the manufacturer simply sets the price and provides a variety of penalties to ensure its enforcement, which would apply if the price is not adhered to.

Q. What kind of penalties?—A. Well, they vary. It all depends on the arrangement. Sometimes it is fines and sometimes it is a matter of cutting

the distributor off the list.

Q. Yes.-A. There are a variety of systems or ways by which that is done, I understand.

Q. And so that what you are saying to the committee is, that if there is abuse in limiting competition, the proper method to deal with it is by the institution of some kind of parliamentary action?—A. That is our position.

Q. That is your position?—A. Yes.

Q. What about the suggestion that retail price maintenance is a necessary method for the manufacturer to provide necessary protection for the purchaser against pyramiding costs through lack of competition. Have you anything to tell us on that?—A. Would you make that question a little more specific? I am not sure that I understand exactly what you have in mind.

Q. The argument, as I understand it, in favour of the maintenance of the retail price system is that it gives the manufacturer necessary protection against pyramiding of costs, let us say, in the matter of labour and wages? -A. You are suggesting, or rather this argument suggests, that if there is not re-sale price maintenance the manufacturer may be squeezed?

Q. That is right.—A. Between the price cutting of the retailer and the

wage raising of the unions?

Q. That is what has been suggested; now, have you any comment you would like to make on that for the benefit of the committee?—A. I am not impressed by that argument. In the first place, I suspect it grossly overestimates the influence which the unions can bring to bear. We are not nearly as powerful as some people think. In the second place, I do not think that the manufacturers who engage in this practice are in need of very much in the way of protection, I think they can look out for themselves and do look out for themselves. I should suppose rather it is the retailer who needs to be protected. But I do not think that the manufacturer needs much protection. I am not very much worried about that problem.

Q. One of the problems you mentioned in connection with unlimited or unrestricted, unregulated competition is the loss-leader. Do you suggest that that should be the subject of special legislation?—A. If it is necessary to deal with this specifically. I do not think it is a very serious problem in a time of high employment and high incomes such as we have now, and as we are going to have as long as Mr. Stalin remains in his present frame of mind.

Q. Well, in view of the range of the problem and all that is involved in it, how do you propose that it should be dealt with?—A. I think that is

a rather large order for me.

Q. Are you familiar with the legislation we have in some of the provinces relating to minimum price and fair trading practices?—A. Well, I know there is such legislation.

Q. Have you read it at all?—A. I haven't had an opportunity of study-

ing it.

Q. You don't know what the effect of that has been?—A. I would not attempt even a guess on that.

Mr. Croll: What provinces do they have such legislation in? I understand they have it in British Columbia and Manitoba. Is it in effect anywhere else?

The WITNESS: I believe they have it in Alberta, also. I have seen reference to that legislation but I have never had occasion to go into it with any great care.

Mr. PHELAN: Mr. Chairman, I think that is all I have.

The CHAIRMAN: Mr. Favreau:

Mr. Phelan: My learned colleague (Mr. Favreau) suggests that you made a statement that there is no connection between brands and fixed prices—is that what you had in mind, Mr. Favreau?

The CHAIRMAN: Perhaps Mr. Favreau would like to put the question himself.

By Mr. Favreau:

Q. I understood you to say that there is no necessary connection between branding and retail price maintenance?—A. Yes.

Q. Would you care to qualify that statement and explain what you meant by that answer?—A. Well, I think it is simply that it is perfectly possible to have branded goods, for the manufacturer to have branded goods, and sell them to the wholesaler who in turn sells them to the retailer without any fixed retail price being placed on them. I do not see any reason why there should be. I do not see that there is any necessary connection. I do not see why there should be.

Mr. Phelan: May I ask a question before I leave the witness. We have been using the expression "resale price maintenance". In that system are there other matters incidental to sale which are controlled, as well as price? I have

reference to such things as the take-in value of articles taken in as part payment. I have also reference to such things as the terms or conditions of conditional sales agreements, and things of that kind. Are they part of the system of resale price maintenance too?

The WITNESS: I think in some cases they are—but I do not know whether they are universal.

Mr. Beaudry: This might be a privileged question in so far as the witness is concerned, in view of your statement at the last meeting, Mr. Chairman, regarding some of the reports presented to the committee being privileged.

The CHAIRMAN: That is right.

By Mr. Beaudry:

- Q. May I ask this question, deferring the chairman's decision for the moment. You did, Dr. Forsey, state that you presented a report to the MacQuarrie Committee?—A. Yes, a very short submission.
- Q. May we discuss it in so far as this one angle is concerned?—A. I have not got it here, and my recollection of it is not as clear as I could wish.
- Q. I would ask one question and, Mr. Chairman, if you decide the question is out of order I will withdraw it.

The CHAIRMAN: Perhaps, in advance, the submissions made to the MacQuarrie Committee covered more than resale price maintenance, and this particular committee is only interested in that phase of it.

By Mr. Beaudry:

- Q. I am only interested in it too. In so far as your report to the MacQuarrie Committee is concerned, short though it may have been, was it substantially different from the brief we have before us?—A. It was very much shorter and I think, in fact, it simply contented itself with saying what our attitude was. As I recall, we did not present any argument—we merely said we agreed with the recommendations of the Royal Commission on Prices in 1949. That was substantially what we said.
- Q. I am interested to this extent. Some passages in the report say that representations to the committee were made by labour organizations, farm co-operatives, and consumer associations. My question is this: Did your report to the MacQuarrie Committee include any more substantial or concrete information than the brief which is before us this morning?—A. Most decidedly not. My impression is that some of the other labour organizations did put in much more elaborate documents than we did. For reasons which escape me now, but which seemed adequate at the time, we put in a very brief submission.
- Q. You state in this brief, and you have reiterated it verbally, that in your opinion the matter this committee is now discussing is unimportant in so far as the cost of living is concerned?—A. Yes, and I am in excellent company there because I think the Prime Minister said exactly the same thing.
- Q. My question to you, is, therefore: Your attitude on the subject or your objection to that price maintenance merely relates to principle?—A. No, it is more than that because, as I said, "small mercies, thankfully received". We think this would be a help but we do not expect it to produce any earth-shaking consequences.
- Q. That is fine, and I agree with that too. However, I submit this is not a Prices Committee; this is a Combines Legislation Committee, and I do not necessarily agree with the conclusion that the subject to be discussed by this committee necessarily has any bearing on higher or lower prices.—A. Well, I do not know what comment I am expected to make on that.

Q. None. I am merely suggesting this to bring you back to the statement in your brief that this proposed legislation we are now studying will, in your opinion, have a very small and unimportant effect on prices. I submit we are not discussing that phase of it at all, but I am taking your brief as is. You state that resale price maintenance limits competition. We will come to that in a minute. You also state that resale price maintenance establishes a private law between some parties?—A. Yes.

Q. Which puts them—and maybe I am putting words in your mouth and if so I will withdraw this—but which puts them beyond the pale of the ordinary law.—A. I am not a lawyer and therefore I speak with some diffidence before a committee many of whom are lawyers. However, my understanding is that contracts of this sort are not at present enforceable at law in Canada. So, in

that sense, I should think it does put them outside the law.

Q. You know we are both in the same boat. I am not a lawyer either, although I went to law school.

Mr. Fulton: You saw the error of your ways.

By Mr. Beaudry:

Q. Under the Napoleonic Code, which is the basis of civil law in Quebec, as the Minister of Justice is well aware, we were taught that it was an axiom of law "la convention des parties fait la loi". In Quebec, anyway, I think it is perfectly legal for private parties to enter into a contract which becomes a law unto themselves—in so far as the terms of contract are concerned?—A. I am not going to attempt to argue on the civil law.

Q. I am not either. I merely want to point that out because your brief does specify at one stage that resale price maintenance becomes in effect a law between the parties. I am only pointing out that in the province of Quebec under the civil law I think it is perfectly legal.—A. As far as I have any connection at all with the law I belong to the tradition of what my friend Professor Scott calls "the barbarous common law" rather than the civil law. I apologize if I in any way left out the question of the civil law of Quebec. I was speaking of the common law provinces—but my opinions on legal matters are not worth anything anyway.

Q. I think they are worth mine.

You did state that resale price maintenance in your opinion would limit competition, and you also stated in your brief that, however, you see no objection whatever to producers or manufacturers imposing a maximum price?

—A. Yes, we are not worried about that.

Q. How, in the normal course, would a manufacturer enforce against anybody stepping over the maximum price?—A. Presumably by the various sanctions which counsel for the committee mentioned, or rather which I mentioned in reply to his question. It would be rather difficult to do.

Q. We will assume that would be normal procedure?—A. I should think so.

Q. If that is so, obviously it would not come under the scope of the drafted amendment or the draft of a suggested amendment, but I do think it would definitely limit competition in so far as these offenders were concerned?—A. Yes, but I did not attempt to say that we objected to all limitations of competition. What I did say was on the assumption, which seems to me to be basic to the Combines Investigation Act, that limitations of competition are prima facie undesirable, and that the case has to be made out for such limitations. That is the public policy embodied in the Combines Investigation Act—but it is not our public policy.

Q. I am just suggesting that this price maintenance to which you object as a factor which might limit competition, cannot be corrected, at least in my humble opinion, by allowing the practice of setting a maximum price. The

recourse of the producer or manufacturer against the offender is in the same position—and therefore if one limits competition the other must too?—A. They both limit competition. One limits competition in our judgment in a highly undesirable way, and the other in a desirable way. We are interested, sir, in spite of your suggestion that our reference to prices was perhaps irrelevant, if I understand your objection in prices, and we have not the slightest objection to anybody stopping prices from going up, but we do object to people stopping prices from going down unless there can be shown some definite sound reason in the public policy for such action—and there may be cases where there are sound reasons. In that case, let us deal with it, we suggest, by legislation. In the present circumstances we feel action which will reduce prices is desirable, and that action which will increase prices is undesirable.

Q. In so far as this committee is concerned, and your brief is concerned, must I take it now that you are not opposed to price maintenance as a practice but you are only opposed to price maintenance when it becomes an obnoxious practice?—A. We are opposed to price maintenance in principle, in the same way I think as the MacQuarrie Committee Report is opposed to price maintenance. The proposal which the committee submitted to the government was, I understand, the basis for this committee's deliberations. That proposal is a proposal to stop the fixing of minimum resale prices, not maximum.

Q. Are we not putting the cart before the horse. You say you are in agreement with the MacQuarrie Report. I would point out the MacQuarrie Report only came after you and various other parties made your submissions?—A.

Well-

Q. Well, that puts a slightly different complexion on the matter. I think you can hardly take the MacQuarrie Committee Report now, because the MacQuarrie Committee Report is based on your argumentation. I think it is the reverse. The MacQuarrie Committee did take your representations and others on which to base its report?—A. I speak subject to correction by the committee, but my understanding was that what was before this committee was the problem arising out of the report of the MacQuarrie Committee, which report definitely recommended the prohibition of fixing of minimum resale prices. That, I thought, was the matter that we were supposed to discuss and in the brief I specifically excluded any discussion except incidentally of this business of maximum resale prices—which came in only as an answer to the argument put up for fixing minimum prices. I thought we were discussing the proposal which arose out of the MacQuarrie Committee Report.

The CHAIRMAN: Mr. Beaudry, I have at least six speakers who have indicated that they wish to ask questions.

Mr. BEAUDRY: I just want three minutes.

I merely point out that the words of the MacQuarrie Report state very clearly that its views on the question of price maintenance as something objectionable were based—or its conclusions were based—particularly on the representations made by the labour unions, farmers, agricultural co-operatives, and consumer groups. My whole reason for putting the question to you is that you, being one of the three parties on which the MacQuarrie Committee based its conclusions—I am interested in finding what your premises were to lead them to those conclusions.

However, I think I can continue on to something else.

The WITNESS: I can answer that, sir.

Mr. BEAUDRY: I do not think it requires an answer, doctor.

Mr. CROLL: Let him answer.

Mr. CARROLL: Yes, because we do not know what his submission to the commission was.

The WITNESS: As far as we were concerned our submission to the MacQuarrie Committee was pretty much the statement that we agreed with the conclusions of the Royal Commission on Prices. Now, the MacQuarrie Committee has produced a variety of arguments on the subject which I read with some care. I think the conclusion we have come to in our organization is that our original feeling is strengthened by the arguments which the MacQuarrie Committee put forward.

By Mr. Beaudry:

Q. Then, you did not produce to the MacQuarrie Committee any statistical or other information which might logically have led the committee to follow your submission?—A. This was a very minor point in our submission to the MacQuarrie Committee but I must again point out that we were only one of a variety of labour organizations, of even the central organizations, and for all I know dozens of individual labour unions in the country may have submitted briefs to the MacQuarrie Committee. I cannot say.

Q. "Resale price maintenance limits competition" is your statement in this. What is the definition of a closed shop?—A. A closed shop, in a collective agreement, a closed shop clause, is by which an employer binds himself to

hire only members of a given union. It limits his freedom of hiring.

Q. Does that limit competition in so far as available staff, personnel, or the category of artisans is concerned?—A. Yes, I should say it does, and we

think there are in some instances good reasons for that.

Q. Let us not go into that.—A. Well, you asked the question, Mr. Beaudry and I want to make one point clear—that the closed shop is something that hardly affects our organization at all. If you want to stress the importance of that to anybody you had better address yourself to the Trades and Labour Congress of Canada, because we are not an organization of skilled craftsmen and, therefore, we have very, very few closed shop agreements. We have a few, but I think you could count them on the fingers of one hand.

Q. Therefore, you agree with me that it does limit competition?—A. Yes,

and I think there are sound reasons for it in many cases.

Mr. Croll: Had not the witness better complete the answer—he was giving us sound reasons and I think we are all interested.

Mr. Fulton: Are we getting close to the question of relevancy?

Mr. Croll: Now that the question has been raised I suggest that he be permitted to give us the reasons.

The CHAIRMAN: Why the limitation to competition is desirable in so far as the closed shop is concerned?

The WITNESS: I think I can sum it up very briefly, Mr. Croll, by saying that when you are dealing with labour and wages you are dealing with something that is not a commodity. You are dealing with human beings, and you are dealing with—what the Pope calls "la dignité de la personne humaine"—the dignity of the human personality. That I think is the fundamental reason why we feel, and why I think most labour organizations feel, that the limitation upon competition in labour agreements, collective agreements, can be justified. I do not say all cases. I am not trying to give a blanket absolution or anything of that kind to what may appear in all agreements. But we do think there are sound cases, in certain circumstances, where undercutting wages should not be permitted—basically because it involves human beings and not simply merchandise.

Q. Mind you, Dr. Forsey, do not think I disagree with you in principle. I have been involved in hiring labour for a number of years and I am fully in agreement with the dignity of the human being in agreements at all times. I am not disputing the value of your contention that men should at all times

be well paid and take all means to enforce that—and I am not disputing it. However, there are many other members who want to question you—.—A. There is an admirable statement, from our point of view, on this whole subject of union security by the Abbe Dion of the Faculty of Social Science of Laval

University, with which possibly you are familiar.

Q. I think we agree. This is my last question and it may seem irrelevant at this time but I think it will not be so later on. In the general taxation statistics for the Department of Revenue, 1950, I find Canadian taxpayers classified by occupation for 1948—listed occupationally by order of average income and so on. I find that two people who are next to one another in brackets and classified as a whole are business proprietors without employees with an average income of \$2,341, and immediately under them, arranged in order of average income I find employees, \$3,301. I merely want to put that on the record. I thank you very much, Dr. Forsey.

The CHAIRMAN: Mr. Croll is next.

By Mr. Croll:

Q. Dr. Forsey, you are familiar with the merchandising practices in the old country, in England, the British Isles, as compared with the merchandising practices in the United States and Canada?—A. I would not say so, I am sorry.

Q. Well, you gave us some indication of your experience as a layman so let me just say this. You started out by stating that you did not think loss leaders are an important problem to the retailer or to the trade.—A. At present.

Q. At present. In the light of that, three provinces have already in some way dealt with it. Is it your view—and you have had an opportunity

to see the draft legislation --- A. No, I have not seen it.

Q. Well, assuming that the MacQuarrie Report is carried into legislative form, is it your view—your view of our merchandising practices in this country, and I have reference to loss leaders-that the retailer does not need some form of protection?—A. I doubt very much whether he does.

Q. It is your view that the loss leader is not a factor today?—A. I do not think it is a serious factor. If you had a depression again it might be a serious factor, but I do not think there is any prospect of a depression in the immediate

Q. I am glad to hear that.—A. I have indicated already that I think perhaps our best safeguard against that is Mr. Stalin-and I hope nobody is going to accuse me of being a communist.

Mr. CARROLL: You have gotten over that.

By Mr. Croll:

Q. Well, from the point of view of the large body of consumers that you represent or speak for today, you think the loss leader is not something that should seriously concern us?—A. I do not think it is, no.

The CHAIRMAN: Mr. Dickey is next.

By Mr. Dickey:

Q. Dr. Forsey, following up your questions to Colonel Croll-

The CHAIRMAN: A little louder please.

By Mr. Dickey:

Q. Dr. Forsey, following up your questions to Colonel Croll, I understood you to say in dealing with the question of loss leader that it was your view that under present conditions there was not much incentive to retailers to employ that particular device?—A. Yes.

- Q. Is that correct?—A. Yes.
- Q. Now, I presume you make that statement in the light of present retailing conditions in which, I suppose we must presume, there is a certain element of maintenance of resale price—which I think we also must presume would discourage the practice of loss leaders?—A. Yes.
- Q. Is that correct?—A. Yes, I think that is true, but I think also that there is a fairly ample field in which the retailer can go in for loss leaders if he is so inclined. I have not hazarded any guess as to how much trade is covered by resale price maintenance, but I should be very much surprised if he has not at least half the field perfectly clear in which to do that kind of thing if he wants to. I doubt very much if any evidence the committee will receive will show that as much as half the retail sales in Canada are covered by resale price maintenance practices. I should be inclined to think, in fact, that the proportion might be much lower than that. That is sheer guesswork. You might have something in mind to show that 90 per cent is now covered by this practice.
- Q. No, I have nothing in mind by way of statistical information but I wanted to get as clearly as I could your approach to the problem, and get it in the perspective of the present situation and the possible future situation. For that purpose I would like to put it to you whether or not you have considered the device of the loss leader, and its possible effect, presuming that some effective legislation is brought into force which would completely eliminate the practice of resale price maintenance? Do you believe that under those circumstances it might become a serious problem?—A. I think it very unlikely. It would probably become rather commoner than it is now but I think it is very unlikely, under any circumstances which seem probable in the near future, that it would be a very serious matter. If it turns out to be a serious matter then action can be taken against it.
- Q. You did not think the possibility of it becoming a serious matter is sufficiently proximate to have it require consideration of what should be done to prevent it before action to outlaw resale price maintenance is taken?—A. No.
- Q. It is rather a future problem than an immediate one, in your opinion?—A. Yes.
- Q. I was also interested, Dr. Forsey, in your reference to the price cutting flurry in New York—Macy's and Gimble's, etc. I wondered if you had observed the similar but less important flurry that took place in Hamilton a few weeks ago?—A. It is news to me.
 - Q. It is news to you?—A. Sorry.
- Q. As you apparently did have some interest in the Macy-Gimble one, I wonder if your researches in that regard have indicated to you that there was any residual effect in the lowering of prices generally, or the prices of any specific articles over a considerable period of time?—A. No, I do not think there has been enough time since that business in the early summer in New York to enable one to form very definite judgment about it—in any case we have not.

I must, I am afraid in justification for these inadequate answers, point out that we have a very large number of things before us. We are not quite as badly off as members of parliament in that respect, but we have to spread ourselves pretty thin on a lot of them and to concentrate on some things we think are of paramount importance to our unions. I have said that we have not regarded this as a paramount problem, while there are things that the trade union movement is much more vitally concerned with on which we are spending more time.

Q. Perhaps you are not as badly off as members of parliament in several respects, but do I understand that you have not been able to make any extended study of the retail field to determine what the relative proportion of price maintenance articles is, and what their importance is?—A. No, we have not.

Q. The argument has been put forward, Dr. Forsey, that over the recent period of price rises or rising prices, that there has been a considerably smaller percentage of rise in the prices of articles that are price maintained than in those which are not. Have you any views on that particular argument or proposition? —A. I should think that is probable, sir. Judging by the evidence submitted to the Royal Commission on Prices, as I recall it, there is a tendency, where all these restrictions operate, for prices to move more sluggishly. There is a tendency for them to become more rigid; they do not move up as fast and they do not move down as fast. I think that is pretty generally agreed, but I cannot give you chapter and verse for it. I just know we have run across that a great many times in reports and documents of one kind or another, which seemed to me to be based on substantial evidence and the results of careful enquiry by people of sound judgment.

Q. That is all, Mr. Chairman.

The CHAIRMAN: Next is Mr. Thatcher.

By Mr. Thatcher:

Q. Dr. Forsey, did I understand you to say that the Congress has not really had time to go out among businesses and examine resale price maintenance in the field?—A. Yes.

Q. I wonder if you can tell me if the Congress has any specific evidence that retail mark-ups on price maintained goods are higher than the mark-ups on goods which are not price maintained?—A. We have nothing on that at all, sir.

Q. Are you assuming that they are?—A. I do not think we can say we assume anything about that. We were just assuming that probably those fixed

prices were usually higher than they otherwise would be.

Q. But suppose you were shown that resale price maintained mark-ups were lower, than the mark-ups on other goods what would your attitude be towards the practice?—A. It depends I think, Mr. Thatcher, on the case. In some cases there may be justification,—quite apart from any retail price maintenance or arrangement—there may be justification for a lower mark-up on some types of goods than on others. I am talking to an expert, I have never sold anything in my life, and you have spent your entire life, or a large part of it, in business as a merchant. I should suppose, from the depth of my ignorance in such matters, there were some goods on which you might put a very high mark-up and others on which you might put a lower mark-up and that the price would vary from commodity to commodity.

Q. Of course, that might very well be the case. But you are not prepared to say to this committee that prices are higher, in Canada today, because of the practice of price maintenance?—A. We haven't got any information on that; we haven't had time to collect it and we never went around collecting it just for the purpose of having it ready in cold storage for use at a moment's notice.

Q. Well then, let me put it this way; has your congress any reason to believe that prices might go down if this legislation was passed?—A. We think

so, yes.

Q. On what information do you base your opinion?—A. Partly on that business which happened in New York last summer and to which I referred. I was talking to a gentleman only yesterday, I think it was, who had been down there and he spoke to me of some very remarkable cuts in prices—one, from which he benefited directly, was when he picked up a Ciné-kodak for about \$30 less than the usual price, and he was very well pleased with it.

Q. You inferred that the opposition of your congress was based on the same arguments which have been advanced by the MacQuarrie Committee for abolition of the practice; you suggested for instance that price maintenance eliminates competition. But some associations contend that this is true only

in the academic sense. Let us take the case of a refrigerator manufacturer. Perhaps there are 10 or 12 lines on sale in Canada. While one of those lines may be price maintained the dealer has the other 11 lines to compete with. In addition there is U.S. competition. Would you care to comment?—A. I think we have got something on that in here in the brief, Mr. Thatcher; in the brief which I sent to the committee.

Q. Oh'yes, I think perhaps it is page 3, at the top of the page.—A. Oh yes, I have it here. At the top of page 3, right there in the first paragraph, in

connection with the report on optical goods where it says:

"The Report added: The basic case against policies of resale price maintenance generally is that price competition amongst dealers is thereby eliminated in the sale of the goods affected. In lines of business in which goods are supplied by many manufacturers, only some of whom prevent sales below fixed minimum resale prices, consumers have some measure of protection. Consumers in such cases can turn to the products of other manufacturers who impose no such restrictions. Even this alternative, the availability of goods not so controlled in price, can be a most inadequate public safeguard. It is especially inadequate when a considerable part of the goods in strongest public demand (a demand often stimulated by the suppliers) cannot be sold below fixed minimum resale prices."

I think that is the only comment I need to make on that.

Q. And, Mr. Forsey, there is another contention which has been made by some of the associations. They argue that if resale price control is abolished the position of the small retailer may be jeopardized in many of our communities.-A. I do not think there is a great deal in it. The large retailers are pretty powerful now but they have not been substantially increasing their proportion of retail trade. As I recall the figures, that has remained pretty stable for quite a long period. Even now, I should think if they were really anxious to put the little man out of business they could probably do it, even with this practice. It is possible that the abolition of this practice would have its effect on the small retailer, and that is certainly a point to be considered. I do not know that the small retailer necessarily has a vested interest such that he should be preserved as a splendid specimen of humanity, regardless of his service to the community. There is a tendency to view the small retailer as a noble fellow who ought to be preserved, no matter how essential or otherwise his services are to the community. I think that is an over-statement of the case. I think there is a certain amount of social value in preserving the small retailer, but not regardless of the cost to the community. I cannot get ecstatic about the small retailer as such; possibly because recently I have been reading H. G. Wells' "History of Mr. Polly".

Mr. Fulton: You have been reading the wrong author. The WITNESS: What do you recommend, Mr. Fulton?

The CHAIRMAN: Have you any further questions, Mr. Thatcher?

Mr. THATCHER: Yes, I have one other question.

By Mr. Thatcher:

Q. It has been suggested that resale price maintenance tends to give all parts of Canada a more standard cost of living, by equalizing costs in all provinces. It was thus intimated that the outlying provinces benefited from resale price maintenance. Would you care to comment on this contention?—A. My comment on that, I think, would be, prohibition of resale price maintenance might bring down the price to people of, for example, my own native province,

Newfoundland, where the income of the people is much lower than it is in this favoured province. I am not interested in a uniform cost of living as such. If we had a uniform level of income across the country, then a uniform cost of living would be highly desirable. If you can bring about a reduction in the cost of living in certain parts of the country by abolishing this thing, that's enough for me. I suppose the argument might be made that it would be cut in the central provinces and not in the outlying provinces. I know that it would take a lot more consideration than I have been able to give to it as yet.

Q. Well, Mr. Forsey—again, would you say that by eliminating retail price maintenance you could bring down prices?—A. In some instances I should

think that probable, yes.

Q. You cannot say in what specific field?—A. No, I cannot. I am sorry.

Q. Mr. Forsey, could we assume from your remarks that the congress is not vitally concerned or deeply interested in whether the legislation is passed or not?—A. No, I think that would be an over-statement. It is not a matter of major policy. But we do have strong feelings about it, even though we think it a matter of minor importance. You can feel strongly about something without its being a matter of extraordinary importance.

Q. I was just judging from page 1 of your brief. You say, "the congress does not believe that either the Combines Investigation Act (with related provisions of the criminal code), or the prohibition of resale price maintenance,

will have any marked effect on the cost of living".—A. Yes.

Q. Can we then not assume that you have no strong feelings about the legislation?—A. No, I must again object to that. I do not think you can take from my brief as a whole that we have no strong feelings about it. We think it is a useful measure and we are heartily in favour of it. We do not think that anybody could fool himself that it is going to have any enormous effect, or even very much effect on the cost of living. It is a matter of priority, a matter of proportion; but, if you mean, Mr. Thatcher, that we are inclined to say; Oh, to the Dickens with it, we don't care what the committee recommends, we don't care what the government does, we don't care whether we have legislation with respect to it or not; that is not so.

Q. Then you definitely like this legislation?—A. We regard this as a very

small but useful contribution and we would like to see it go through.

By Mrs. Fairclough:

Q. There has been considerable discussion about this price war in New York, that it was a major affair in retail selling over the border. I think a price war of that kind was merely a flash in the pan, in so far as it affects the cost of living. We may get a few drops in price, but in order for it to affect the cost of living it would have to cover a wide range of articles that the consumer wanted to buy. I think a far more important factor in the retail price situation is this practice we have heard referred to as the loss-leader in price selling and that that would affect the retailer much more than any price war here or there.—A. Would you mind saying that again?

Q. What I am saying is that a price war as such is not as severe a hardship in the retail field as the continuous practice of loss-leader selling.—A. Oh, I

think that is probably true. Yes.

Q. I mean, if you want an expression of opinion from me, this matter of a national price, a maximum price regulation, or a minimum price regulation, whoever it is set by, or whatever you call it—it fixes the actual price of the goods to the consumer. And now, does that mean that the considered effect of a national price is to become a target price, a fixed price. We had very substantial evidence of that during the last war when there were fixed prices in a large number of cases and these prices kept rising and eventually were fixed and

stayed there. In the field of price fixing, the manufacturer is going to fix a maximum price, as long as it does not work to the detriment of the consumer it might actually work to the benefit of the consumer, by giving him a price better than that which you would otherwise get on the article. Is that not possible?-A. The maximum, or the "suggested" price, might become the minimum, I suppose. However, I do not think that is a thing which you can very effectively deal with by legislation; I mean, if a thing is merely a suggested price. What this proposed legislation is to deal with, as I understand it, is a definite, fixed, minimum price. If the price is in fact nothing more than, as you say, a suggested price, then of course you may have no ground for action; but what we are concerned about here is not a suggested price at all, but an actual minimum price, fixed. A good deal hangs on that term, suggestion; it all depends on the way the suggestion is made and the form that it takes. remember some years ago an instance in connection with a manufacturer in Montreal who had been told that his employees were thinking about joining a union. He called them together and what he said to them was, Do any of you want to join a union? Now, if he put that in a pleasant, friendly tone, it would mean one thing, but if he roared it out in an intimidating tone, the effect would be quite the opposite.

Q. Well, Mr. Forsey, what I had in mind was that we should consider the extent to which manufacturers are using this practice of price fixing. I think that we should be very careful today that we do not do what your organization refers to as changing from one evil to a greater evil in this matter of prices. Now, here is a very interesting point brought about in your answer on this difference between a suggested price and an enforced price; I mean, a minimum, a fixed minimum. There are a great many prices, minimum re-sale prices in this country that are suggested, even the labels on the bottles carry the price on them, and there are others which are hard to fix and which, as you have said, are obviously unfair. I think when you talk about the volume of retail trade in Canada which operates under price control we have to consider how much of that is subject to a penalty, and that we should have some idea of the proportion of retail trade which would be affected.—A. Presumably the committee will have evidence on that from the various trade associations and so on, and from individual retailers, who can speak with positive knowledge in that respect. I didn't pay much attention to this business of a maximum price being fixed, because it seemed to me that that was pretty clearly ruled out by the terms of reference.

By Hon. Mr. Lambert:

Q. Dr. Forsey, I understood you to say that you have not had time to consider the effect on the cost of living of the price maintenance system. Would you be interested in having more time, if it was available, in which to submit more evidence on that point?—A. If the committee wants us to do so, we should be quite willing to make an attempt. My own feeling is that the committee will get better information, faster, from the particular trade witnesses who come before the committee. I am quite prepared on behalf of my organization to make an attempt to do that, but I suspect that you would get more complete information and much more exact information from trade witnesses.

Mr. Thatcher: Might I interject there to say that that information was rather one-sided?

By Hon. Mr. Lambert:

Q. My point is really brought out in my next question. You will agree, and I think you admitted, that the consumer interest is the prevailing interest in connection with this whole investigation?—A. Yes.

- Q. And that your organization represents a very considerable scattering of the general body of consumers. Now, is it correct to assume from your statement that you favour having price maintenance legislation?—A. Yes.
- Q. As a minor step towards the objective of price control which your organization is advocating; is that so?—A. No, I would not call it a minor step towards that. We favour it in itself. I do not think it is necessarily a step in that direction. I was not trying to suggest that it was a step in that direction.
- Q. You said very definitely that it was a minor step, a minor step towards what?—A. Towards getting lower prices.
- Q. I see. That is very important because my thought, in listening to you, was that your emphasis was placed upon humanitarian grounds rather than on economic grounds, on the actual price foundation or the actual price structure. And now, if I am simplifying your position too much I think it would be important to clarify that distinction; in other words, is your organization interested in lower prices?—A. Yes.
 - Q. Essentially in lower prices?—A. Yes.
- Q. Not in fighting any combine in particular?—A. No, not particularly any individual or group, we are interested in the result.
- Q. And the result of resale price maintenance is a form of combine?—A. It is a restriction of competition. I think the term combine is one that would apply rather to a group of people getting together, where here it may be simply some individual or some company or corporation acting on its own. I rather think that one would call a combine a larger group of individuals.
- Q. We are concerned here with the possibility of an amendment to the Combines Investigation Act to deal with price maintenance?—A. Yes.
 - Q. To that extent you would agree that it is a form of combine?—A. Yes.
- Q. Have you any fundamental objection to a so-called combine in relation to the prices at which their products are sold?—A. Our objections are to the result. Essentially, I think our position on that is the same as the position of the Act itself. As I understand it, the Act does not make a combine in itself subject to prosecution, the related part of the criminal code does not, but a combine which acts in a manner detrimental to the public interest in specific ways, mentioned in the legislation, as I recall it.
- Q. The reason I asked you that was because of the statement you made. You stated very definitely your reasons for believing in the question, which, you said, was humanitarian?—A. Yes.
- Q. And I assumed that you probably took some ground on which to base your views, the strictly humanitarian other than the strictly economic ground?—A. Well, we objected to it in so far as it raised prices beyond what they otherwise would be, and it is in that respect that I think the consumer should be protected. That is the position in simple terms.
- Q. You feel that the large department store, the chain store distributor, would affect the price maintenance practice. In other words, would you favour competition offered by these distributing agencies as of value and in the interests of the consumer as a whole, as opposed to a system of price maintenance?—A. Do I favour the continuing existence of chain stores and department stores?
- Q. My question was would you regard—do you feel that these large department stores and chain store distributors have any effect on this practice of resale price maintenance that applies to manufacturers and retailers?—A. I am afraid I am dense. I don't quite get the point of your question yet. To some extent these people, like other retailers are forced to sell at a fixed resale price. They are freer to some extent. They may have their own brands which they use to compete with the manufacturers' brands.

- Q. Do you think in their price structure as a whole they have any influence on this sort of thing, do they bring any pressure to bear on this retail price maintenance?—A. I should think they must.
 - Q. You think they must have some influence?—A. Yes, to some extent.
- Q. And in that way would you say that they were rendering a service to consumers as a whole?—A. In competing with re-sale price maintenance goods, do you mean?
- Q. Yes.—A. Yes, I think so. Q. There was reference to brands. Does it depend—I agree with what you say, but I just wanted to clarify it a little; you said that you did not think the brand on goods had anything to do with price?—A. I suggested that there was no necessary connection.
- Q. Price and quality?—A. Between re-sale price maintenance and branding of goods.
- Q. Just why would you say that? Have you any evidence of the point that you can give us?—A. I haven't anything to go on, except what I say in my
- Q. It would not relate particularly to a private brand as opposed, for instance, to a brand used by a chain store or a department store? In many cases they have their own special brands and the manufacturer has no right to sell that brand to anyone outside of those chain or department stores; but, with respect to goods which are distributed amongst others, that is what you mean? —A. It was something much more simple than that, sir. What I had in mind was simply, for example, that the mere fact that there is an article bearing a certain name does not necessarily mean that it has got to be sold at the same price in all the shops where it is displayed. For instance, there is a particular brand of coffee. That does not mean that it must be sold at the same price by all the people who sell it all over the country. That is what I had in mind; that there is nothing, in the very nature of things, to prevent different retailers from selling that particular article at different prices; but there is something in the system of re-sale price maintenance which will prevent them from doing that.

By Mr. Fulton:

- Q. I have two questions, Mr. Chairman. I would like to be quite clear on this, Mr. Forsey, in this matter of loss-leader practice; that your congress would in no way be opposed to legislation which would eliminate this practice of lossleaders in retail merchandising practice?—A. Not with respect to loss-leader practice generally, providing reason could be shown for it. We doubt that it is of any great importance at the moment, anyway. question comes up, if it does, and legislation is proposed, we would have to examine the thing on its merits and see just what is involved. Sometimes you get goods, merchandise, offered at attractive prices with a move to moving stock when as a matter of business practice it is not a loss-leader. In any event, we do not think the practice is sufficiently general at the present time and under present conditions to cause any great concern.
- Q. I am just trying to make sure that I understand that phase of the picture. I think both are important, and therefore, what I am talking about, my question relates to the practice which I think is generally understood as the loss-leader practice. That is a device used, as I think you will agree, as unfair competition. And now, in that sense, I take it that your congress would not have any objection to legislation making that practice illegal?—A. I would put it this way, Mr. Fulton; that if it can be shown that some particular competitive practice is producing undesirable results, then we are in favour of legislation to curb that undesirable practice; but we are not committed to the elimination of competition in all circumstances regardless of the results. We

are concerned with what the results are, and if it can be shown that a particular competitive practice is having undesirable results from the point of view of the public, then we think that something should be done about it.

Q. In other words, with respect to loss-leader practice you would base your position on whether or not it affected the public interest adversely?-

A. Yes.

Q. And in respect to the retail price maintenance practice you would not go quite so far ... A. Our approach to it is its relation to the public interest. If it is injurious to the public interest that we think is a matter for legislative

By Mr. Thatcher:

Q. Further to that, Mr. Forsey; if it were shown by subsequent evidence that these prices were lower because of fixing, would your congress be opposed to the practice?—A. We are interested in the results, Mr. Thatcher; if we could be convinced that the practice was desirable, that it was in the interests of the public, we might be induced to change our minds.

By Mr. Croll:

Q. Would you look at the bottom of page 6, Mr. Forsey? Do you recognize your statement—"secondly"—would you read that, Mr. Forsey?—A. "Secondly, the methods of enforcement described above involve a private system of law and punishment allowing no appeal to the established courts of justice".

Q. How do you reconcile that with the very important principle which you have enunciated?—A. Well, that is certainly an objection in principle. To be perfectly frank, I am speaking here for the membership, and I think I may say for them, as I have said here, that they are interested in results. Now, if it can be shown that this system is objectionable in its results, they will want to see it controlled. If it is not, then I do not think they are going to be terribly worried about it. That may sound like a shocking confession, but I think that is the attitude they are likely to take. They are interested in results—and I think there is a good deal in it. I am afraid that on some of these matters I am an old Tory-I am interested in results.

This is what I was going to say in regard to Mr. Fulton's question. Again, if you can show a few cases where this loss leader is working badly I would not be terribly worried. I think there has to be a substantial abuse before the law

is obliged to step in.

By Mr. MacInnis:

- Q. I have got Mr. Fulton's permission to ask this question. In regard to the loss leader if, after investigation such as we have had at various times into resale price maintenance, they found there was a reason for legislating against the loss leader, would you be agreeable to it then?—A. Oh, certainly. We are open to conviction on the facts. We want to study the facts and the evidence and arrive at a conclusion which seems to be indicated by the evidence. If you can show substantial abuse which requires legislation we say: Yes, deal with it.
- Q. In regard to restrictions on competition, if there have to be restrictions, you would say those restrictions should be made by parliamentary law and not by private law?—A. I think that is the desirable position. I know what Colonel Croll is going to say. He is going to say that I am contradicting myself. We are interested in results but I think we would also take the position that if there are to be restrictions it is desirable that they should be public and not private restrictions. Therefore, if you can show that private restrictions are working no appreciable harm I do not think anybody is going to get all excited and bothered about-

By Mr. Croll:

- Q. Does not principle mean anything?—A. I am giving you my opinion on how our people react.
- Q. I know, but I am talking to Forsey, not to 300,000 people. I appreciate that you fully understand what is involved here and we are speaking to you. I am sure that the man on the lathe would say: I am only interested in the results. But he is not here; you are here—and to me that appears to be the kerenl of the whole act.—A. Again, we are dealing with legislation or possible legislation, and I have this empirical approach to the thing. Legislation is not simply a matter of principle. You want it based on sound principles, to be sure, but there are a great many things with which legislation is not called upon to deal, in my judgment. Legislation is only called for when you have got substantial, practical injury to the public interest. There are a million things which I object to in principle but where I would say there is no reason for legislation, because while this particular thing under certain circumstances might have an injurious effect it is not having an injurious effect now. So let it alone until you have got substantial, practical cause for legislation. There are enormous numbers of things that need to be legislated upon. I do not think it is worthwhile wasting parliament's time, or anyone else's time, in dealing with things which are not of practical importance. I think this matter is of importance, but if it were just a matter of principle, without any substantial effect at the moment, I would say: why bother with legislation?
- Q. May I follow that then with one more question? Under certain circumstances which you may consider beneficial would you say we should set up what we might term a super government—a government by private interests?—A. No, but that is purely a hypothetical question. After all, if you have got a super-government, a government by private interests, there would be an immediate, grave, substantial, and unmistakable injury of the public interest—in my judgment. But, if you say in a particular case: Here is something which, theoretically, pushed to its logical conclusion, would mean thus and so—then I say legislation is not concerned with pure matters of theory or logical conclusions. It is concerned, in my judgment, or ought to be concerned, with substantial injury to the public interest, and with preventing substantial injury to the public interest. There are thousands of things where we might say: this principle is bad, or that principle is bad—but you do not call upon parliament to legislate upon them unless you think there is a valid reason for doing so.

The CHAIRMAN: Perhaps Mr. Fulton can return to his question.

Mr. Fulton: Leaving the loss leader question, on which I do not think we can arrive at any finality—because you are not convinced there is any substantial detriment to the public interest—I would like to turn again to the legality of these contracts. Please be assured that I do not want to involve you in any legal argument but I think it is necessary to make one reservation. I understood you to say this: In your understanding, contracts such as those we have been discussing to maintain resale prices, would not be enforceable in the courts? That was your statement?

The WITNESS: That was my understanding of the position. I think I was basing myself largely on what the commissioner under the Combines Investigation Act said in one of these reports.

Mr. CROLL: And what he said here in evidence.

Mr. Fulton: Let us get that straight. All he said here was he would not think the present Act was sufficient to justify prosecution of somebody on a charge of resale price maintenance—which is a very different thing from

the question I am asking Dr. Forsey now. I understood Dr. Forsey to say—simply as a statement, and I am not wishing to get into any legal argument, but I do think it is necessary to make a reservation if that was your statement—I understood you to say that these contracts, individual contracts to maintain resale prices, would not be enforceable in the courts?

Mr. Boucher: In England?

The WITNESS: This is a quotation from the report of the commission, the final report on the Proprietary Articles Trade Association, 1927, at page 24:

Wampole, Colgate, and others have for many years adopted price maintenance agreements. They have absolutely refused to sell their branded goods to a wholesaler or retailer who would not undertake to maintain the selling price fixed by the manufacturer. Contracts such as these in Canada are unenforceable at law.

That is what I was basing myself on. I was assuming that the commissioner had good legal opinion on that or he would not have said it. Being a layman I am not in a position to question—

By Mr. Fulton:

Q. Your statement is based upon that statement of the commissioner?—A. Yes.

Q. Then would it not be necessary, to be strictly accurate, to limit the statement to contracts of that particular type which is then being discussed by the commissioner, and not make it of general application to contract generally or agreement to maintain resale prices?—A. Possibly. I was under the impression that would apply more widely but, strictly speaking, it does apply only to prices in the contract that he mentions. My impression was it did apply more widely, but that may be my ignorance of legal matters.

In my own defence, I feel obliged to add that you can get pretty good legal opinion for quite a variety of conclusions on these matters—even judicial

opinion.

Mr. Thatcher: On a point of order, I wonder if we could not call Dr. Forsey back, there being only ten minutes of free time left.

The CHAIRMAN: I think we can go on until one o'clock. I have only three others who want to speak.

The WITNESS: I am afraid I have been too long.

The CHAIRMAN: Mr. Stuart is next.

Mr. Stuart: I would just like to read Section 29 of the Combines Investigation Act:

29. Whenever, from or as a result of an investigation under the provisions of this Act, or from or as a result of a judgment of the Supreme Court or Exchequer Court of Canada or any superior court, or circuit, district or county court in Canada, it appears to the satisfaction of the Governor in Council that with regard to any article of commerce, there exists any combine to promote unduly the advantage of manufacturers or dealers at the expense of the public, and if it appears to the Governor in Council that such disadvantage to the public is facilitated by the duties of custom imposed on the article, or on any like article, the Governor in Council may direct either that such article be admitted into Canada free of duty, or that the duty thereon be reduced to such amount or rate as will, in the opinion of the Governor in Council, give the public the benefit of reasonable competition. 1923, c. 9, s. 23; R.S., 1927, c. 26, s. 29.

In your opinion, could that particular section of the Act be used to greater advantage in Canada?

The CHAIRMAN: Mr. Stuart, our limit here is resale price maintenance. Your question, of course, will have to tie into that?

By Mr. Stuart:

Q. Yes. In your opinion, have manufacturers in Canada taken advantage of tariff protection to keep their prices way above that for the same article manufactured in the United States?—A. I think in some instances, yes, but I confess I was not prepared for that particular kind of question and I should not want to go into any kind of detail on it without having time to prepare a proper statement.

I do not think this particular remedy is likely to be sufficient in dealing with the question or problem before this committee. If you want my opinion—this whole thing is pretty "iffy" as Mr. Roosevelt would say—I doubt that, even pushed to the limit, it would meet the problem this committee has to deal with.

Q. There is one other question and it is in connection with price leaders that they speak of in different stores—

Some Hon. MEMBER: Loss leaders.

By Mr. Stuart:

Q. Loss leaders. In your opinion, would they be of benefit to more people than they would harm?—A. Which?

- Q. A loss leader. Would it benefit a greater number of people than it would injure? In other words, could I put it this way? If a certain article sold normally for a dollar and, as a loss leader, if it was marked down to 75 cents, would that benefit a greater number of people than it would harm?—A. I do not think it is possible to give a categorical answer. Something depends upon how often it happens; something depends upon what kind of article it is; something depends upon a variety of factors. I could not give you a categorical answer.
- Q. Could it ever injure a greater number than it would benefit?—A. Oh, yes, I think it could.
- Q. It could?—A. Yes, but if it were an occasional thing it might not injure anybody much at all.

The CHAIRMAN: The minister is next.

By Hon. Mr. Garson:

- Q. I gather from your evidence that you are of the opinion that in theory there is no reason why resale price maintenance should not apply to unbranded goods just as much as to branded goods?—A. I do not see why it should not. It is probably easier to apply it to the branded goods.
- Q. Have you any information as to whether in fact there are any unbranded goods ever under resale price maintenance?—A. No, I have not.
- Q. I want to make sure that I carry away from the meeting here a correct over-all impression of the effect of your brief. I gather that your organization is in favour of public control of prices under present circumstances?—A. Yes.
- Q. But that if you cannot have that public control you are opposed to private control which is exercised quite independently of parliament or the courts?

 —A. Yes.
- Q. And in the absence of price control in the sense—in the public sense, in which you favour it—you favour free enterprise being really free and really enterprising?—A. Yes.

By Hon. Mr. Golding:

Q. This has been an interesting discussion this morning but, as one member of the committee, I am particularly anxious to know just how this practice has

95986 - 3

affected the consuming public, if it has affected them detrimentally, and what it has had to do with the increased cost of living? Now, I think I am justified in drawing a conclusion that so far as Dr. Forsey is concerned, you have no evidence, doctor, on which you can put your finger, to show that it has acted detrimentally to the public or that it has increased the cost of living? Am I right in that?—A. Nothing but what is in here.

Q. But actually you have not pointed to anything in your evidence to show that, am I justified in drawing that conclusion?—A. Yes, in the time at your disposal we were completely unable to produce any case by case history of the

thing. That is all. I am sorry, but we could not.

The CHAIRMAN: Mr. Carter.

By Mr. Carter:

Q. While we were talking about loss leaders I was wondering if Dr. Forsey would express an opinion of the effect of the loss leader on an industry such as the baking industry? They sell wholesale to chain stores, they also have their own retail outlets, and they themselves are in the retail business. When the big chain stores sell that bread below cost does that not have a detrimental effect on the other retailers and the industry as a whole?—A. It may have a detrimental effect on the other retailers, yes. I do not think that is the whole story, however. I think you have got to look at the whole story and weigh one detrimental effect against another beneficial effect.

Q. The nature of the industry itself is such that in most cases they are

manufacturers and retailers at the same time.

By Hon. Mr. Lambert:

Q. Is it not important to consider in this question what "below cost" is?—A.

Highly important.

Q. Because, there are certain well-known chain stores that do their own baking and sell their bread unwrapped or wrapped in competition with established bakeries which retail bread. Their prices are lower but I doubt very much if they are "below cost".—A. That is exactly the reason, Senator Lambert that I tried to cover myself on the point with Mr. Fulton. All that glitters is not gold, and everything that is called a loss leader is not a loss leader.

Q. I think, Dr. Forsey, that if you could arrange for your organization to give us a more detailed, complete statement based on data for these things, it would be very valuable from the consumers' point of view?—A. I am willing

o trv.

Q. I am not suggesting that you do it, you know, but I think it would be valuable if you could give us more of that information here?—A. It would have been most satisfactory to us to be able to do it, but I regret that with our facilities and the time at our disposal it was not possible. If the committee is going to sit long enough I would be prepared to try it—but it is not something that I can do overnight.

The CHAIRMAN: Senator Fogo?

By Hon. Mr. Fogo:

Q. Most of the questions I had in mind have been answered but I would take Dr. Forsey back to his mention of the national labour organizations. I wonder if he omitted one. Is there an organization known as the Canadian Federation of Labour?—A. You may call it an organization if you want to.

Q. I am not calling anything: I am asking you a question?—A. In so far as it exists—and we have grave doubts of its bona fides on every ground. It is not a labour organization in the sense we use the word in the labour movement; it is completely disowned by all bona fide unions. It is "a roaring farce, and a resounding fake", to use a phrase of my old friend Mr. Meighen.

Q. In your opinion what is the approximate membership of the Canadian Federation of Labour?—A. I can give you exactly what the figures are. It claimed 3,971 members at January 1, 1951. It had then, apparently, six local branches—having lost one in the course of the year.

The CHAIRMAN: We are now in the second round—unless any person who has not already spoken wishes to do so now? The first person on the second round then, is Mr. Croll.

By Mr. Croll:

- Q. Following the questions asked by Senator Golding and Senator Lambert, you did have an executive meeting of your organization last week, and you dealt with some three matters, one of which was price maintenance.—A. I do not know how many were dealt with, I was not present.
 - Q. But price maintenance was dealt with by the executive?—A. Yes.
 - Q. They 'passed a resolution?—A. Yes.
 - Q. Unanimously?—A. So I understand.
- Q. I am now trying to find out just how far we can carry the views of the organization—.—A. I am afraid that with respect to what took place at the executive council meeting you had better ask Mr. Harry Chappell, our secretary-treasurer.

Mr. Chappell: If I may answer that: Yes, it was a completely unanimous decision with the most largely attended executive council meeting we have had for years.

Mr. Beaudry: I would merely like to correct the record, Mr. Chairman. I said earlier that I was fully in accord with artisans taking all means to preserve their dignity and, in general, to preserve the dignity of man. I would like to interpolate the word "legal" in front of the word "means".

By Mr. Fulton:

Q. The only point I want to clear up has to do with the answer Dr. Forsey made in regard to the loss leader practice. I want to make it clear that my question with regard to loss leaders refers to that practice which is the practice of selling brand named goods at less than cost in order to attract business from competitors. It is with respect to that practice my questions were asked. I would now, having defined it that narrowly, repeat the question: Does your organization at the moment at any rate take the position that it would be opposed to legislation making that practice illegal?—A. Not if there were shown to be substantial injuries resulting. If you merely get an occasional flash in the pan, the occasional instance, I do not think it is worth while bothering about legislation. But, if you can show it is a widespread practice causing injurious results, then by all means deal with it by legislation.

Q. Would you attempt to carry it one stage further—that the retailers contemplating legislation and the situation arising out of legislation, are justified in being afraid of the consequences of that practice—just as you feel that undesirable situations may arise out of resale price maintenance?—A. That they are justified in being afraid of the consequences of this proposed legislation?

Q. No, in being concerned over the possibilities of what may follow if resale price maintenance is made illegal without at the same time making illegal that particular loss leader practice to which I have referred?—A. No, I will not go so far as to say that and certainly I doubt if there is much there to worry about.

Mr. Croll: Do you know, as a matter of fact, that in the United States—perhaps not the majority but a very large number of states have found it necessary to deal by legislation with the question of the loss leader?

The WITNESS: No, I do not know.

Mr. Stuart: Speaking of the question of loss leader would there be any great difference between one item shown as a loss leader and the case where a clothes merchant in a town comes out with a big ad that he has marked down all his merchandise 20 per cent? If a merchant wants to come out with an advertisement that all the merchandise that he has is at a 20 per cent discount, is there any harm in it?

Mr. THATCHER: That is not a loss leader.

The WITNESS: Certainly, it is not a loss leader.

Mr. CROLL: The fellow that does that is completely lost after a while.

The WITNESS: There is no leader about it, because he is marking down everything.

The CHAIRMAN: Order.

The WITNESS: I am sorry that I interrupted. What I was going to say is that there might not be any loss.

Mr. Stuart: That is exactly what I believe. I do not believe any retailer is going to sell below his cost?

The WITNESS: He may, in some instances.

Mr. Beaudry: Then, he does not fall into the practice of loss leaders.

The CHAIRMAN: In conclusion, does either counsel want to direct any questions?

Mr. Phelan: I would like to ask a question or two which may be relevant.

By Mr. Phelan:

Q. The committee were obviously interested, Dr. Forsey, in getting information in the field where prices were maintained and where they were

not—getting some statistics?—A. Yes.

- Q. Would you tell me if this investigation to which I am going to refer might be of benefit to the committee. Fortune Magazine, and a number of other United States national oragnizations, have made a report very recently on extensive inquiries into that field. They selected a number of price maintained articles and they took prices in Washington where they have no price laws, and they compared them with prices in adjoining states where they have price laws. They got some very important results, showing that in Washington prices were lower. Would the situation there be comparable so that this report would be of any help to the committee?—A. I should suppose it would, yes. Because I think that generally the merchandising practices in Canada and the United States have a good deal of similarity. After all, a great many manufacturers here are branches of American firms, and the same is true of a certain number of retail firms.
 - Q. Fortune has a good article on it.

Mr. THATCHER: Before you leave that question—

Mr. Beaudry: May I suggest, very respectfully, that I think we are asking the witness to give us strictly an opinion—an answer based on his own personal opinion.

Hon. Mr. Garson: But I want to point out that it is an answer based on his own expert opinion as an economist. The question is whether the comparison made between the resale price maintained prices in certain states in the United States, and prices in other states where they are not maintained,

would from an economist's point of view, be of value before this committee. I do not know any person around the country for whose opinion I would have higher regard in this context than Dr. Forsey?

The WITNESS: The minister is a good friend of mine and that should not be taken too seriously.

Mr. Phelan: All I was going to ask was whether you think it would be of value?

The WITNESS: If you want me to be more precise, I would not consider it to be conclusive, because there would be a large difference between the American situation and the Canadian situation, but I think it would have some value.

The CHAIRMAN: Mr. Thatcher.

Mr. Thatcher: Following Mr. Phelan's question, I think it was a good one, but I do not see why we should take American prices. Would not the proper procedure be for this committee to call in companies who sell merchandise at resale prices and at other prices—and get a long list of prices and we can compare the two. It seems to me that would be the way for the committee to get at the Canadian situation.

The Chairman: At the next meeting of the steering committee we will know what briefs we are to receive and we will be in a position to know what witnesses we have to call.

By Mr. Phelan:

- Q. I think you have probably covered this second question but I put this illustration to see if I get a correct conception of your position. We know from experience that two merchants in the same town may sell at different prices. The prices of one are controlled in part by the fact that he is in a low priced district, gives low service, and there are other factors. The other man's prices are higher because he is in a high priced district and so on. The customer has the right to decide whether he wants to buy at the higher price or the lower price?—A. Yes.
- Q. Is it your objection that with resale price maintenance the customer has not that privilege?—A. That is one of our objections.

The Chairman: Tomorrow afternoon at 3.30 we will hear the Allied Beauty Equipment Manufacturers and Jobbers Association whose brief has been received; Thursday we will hear the Canadian Pharmaceutical Association, and Friday the Canadian Retail Association Federation whose brief is to be distributed.

Mr. Thatcher: On a point of order are our meetings to go on regularly from 10.30 until 1.00? Is that hour fixed?

The CHAIRMAN: I would hope so because it is the desire of most of us that we complete our proceedings as quickly as possible after due study.

The meeting adjourned.



APPENDIX A

SUBMISSION

of

THE CANADIAN CONGRESS OF LABOUR

to

THE JOINT COMMITTEE ON COMBINES LEGISLATION

Ottawa, Ontario. November 20, 1951.

Messrs. Chairmen and Members of the Committee:

The Canadian Congress of Labour regrets that in the time at its disposal it has not been able to prepare as complete and fully documented a submission on this subject as this Committee has a right to expect. It was only on November 6 that the motion for the Committee's appointment passed the House of Commons. It was only on November 13, late in the afternoon, that the Congress was told to have its brief in the hands of the Committee by November 19. This left three working days to assemble the material and draft the submission. This is not enough.

It might perhaps be supposed that, with its special interest in everything that affects prices and the cost of living, the Congress would have had all the material gathered and laid away, in cold storage as it were, ready to be produced at the drop of a hat. This is not so. The Congress does not believe that either the Combines Investigation Act (with the related provisions of the Criminal Code), or the prohibition of resale price maintenance, will have any marked effect on the cost of living. In the words of Dr. Johnson, "It is setting up a farthing candle at Dover to give light at Calais." So the Congress has preferred to concentrate on price control, which it thinks far more effective.

However, prohibition of resale price maintenance was the solitary new measure the Government offered for dealing with the high and rising cost of living. As such, the Congress welcomed it, in the spirit, "Small mercies thankfully received." The Congress would still welcome it, and hopes this Committee will recommend it.

Resale price maintenance is an old story in Canada. A whole string of reports under the Combines Investigation Act have noted its existence, and condemned it.

The two reports on the Proprietary Articles Trade Association, in 1926 and 1927, both dealt with it. This Association, it may be recalled, comprised 157 manufacturers of drugs, 28 wholesale druggists, and 2,732 retail druggists. The 1926 interim report says (p. 18): "The agreements could not be clearer as to the intention to fix resale prices. Moreover, the intention has been carried out, as evidenced by the list of approximately 600 protected articles, with their minimum wholesale and retail prices attached, which was published by the Proprietary Articles Trade Association prior to August 28, 1926, on which date the new prices came into effect. True, the individual manufacturers have suggested the prices for their particular articles; but... the actual fixing of prices, and the machinery to establish them are the work not of the individual manufacturers but of the Association as a whole."

This last sentence, however, is qualified by something which appeared in the final report, in 1927. At p. 24, that document says that Wampole and Colgate, "and others," "have for many years adopted price maintenance agreements. They have absolutely refused to sell their branded goods to a wholesaler or retailer who would not undertake to maintain the selling

price fixed by the manufacturer. Contracts such as these in Canada are unenforceable at law, but according to the evidence, such manufacturers have found virtually no difficulty."

In other words, in the drug trade at that time, both individual manufacturers and groups of manufacturers acting with the wholesalers and

retailers, fixed resale prices for a large number of goods.

The final report on the Proprietary Articles Trade Association noted (p. 17) that "most tobacco lines" handled by P.A.T.A. druggists were "handled on a minimum price basis." Eleven years later, the investigation into the tobacco combine showed that Imperial Tobacco, through its subsidiary, Imperial Tobacco Sales, was not only fixing resale prices for Imperial products but helping to fix them for products of other tobacco manufacturers as well. Imperial Tobacco Sales' contracts provided that the dealer should not sell Imperial products below the price fixed by Imperial, nor other products below the prices fixed by their manufacturers. (Report on the Tobacco Combine, 1938, pp. 24-27. The Report of the Royal Commission on Price Spreads, 1935, p. 53, had already noted this.)

The Dental Supplies Report, 1947, also dealt with resale price maintenance. Here the situation seems to have been that the fixing of prices was primarily the work of Canadian Dental Trade Association, a regional section of the American Dental Trade Association. The American association included manufacturers; the Canadian didn't, as there were practically no manufacturers in Canada. The Canadian dealers did the price-fixing, "frequently without discussion with the American manufacturers." Their defence was that really they were just telling their members what they should do "when faced with suggested resale prices by manufacturers." (P. 36.) The Report commented that "Even if in fact members of the association were merely agreeing to maintain resale prices suggested by American manufacturers, such an agreement would result in preventing competition or lessening it to a very great degree." (P. 38) Later, it said: "In some cases agreement involved the maintenance of resale prices suggested by the manufacturer." (p. 84.)

In the Optical Goods Report, 1948, the Commissioner drew attention to the fact that American Optical, from 1939 till early in 1947, shortly after the first hearings in the investigation, "controlled minimum resale prices," and that even after it stopped doing so, the trade had got so accustomed to "the higher level of prices," that "few were inclined to charge below the minimum, and a great many were able to continue with prices considerably above the minimum." (p. 79.) The Report added: "The basic case against policies of resale price maintenance generally is that price competition amongst dealers is thereby eliminated in the sale of the goods affected. In lines of business in which goods are supplied by many manufacturers, only some of whom prevent sales below fixed minimum resale prices, consumers have some measure of protection. Consumers in such cases can turn to the products of other manufacturers who impose no such restriction. Even this alternative, the availability of goods not so controlled in price, can be a most inadequate public safeguard. It is especially inadequate when a considerable part of the goods in strongest public demand (a demand often stimulated by the suppliers) cannot be sold below fixed minimum resale prices."

The Report on the Bread-Baking Industry in Western Canada, in 1948, also called attention to resale price maintenance: "The evidence establishes that the bakers were concerned not only with the fixing and maintenance of a uniform wholesale price, but also with the fixing and maintenance of a uniform retail price. The policy of retail price maintenance in itself prevented retailers from passing on the benefits of rebates and discounts to consumers." (p. 80).

The Report on the Match Combine, 1949, devoted a whole chapter to resale price maintenance. This chapter concludes: "While it is evident that

certain trade groups have been anxious that Eddy Match should establish resale prices and see that they are observed so that the members of such groups should be protected from active price competition, it is equally evident that Eddy Match has employed the policy of resale price maintenance for its own purposes in limiting the effects of competitive selling in periods when independent companies were operating. The objective of Eddy Match in this direction as in others has been to maintain, as far as possible, non-competitive conditions in the Canadian match industry and to prevent the development of any competition which would disturb the pricing policy which it has established on the basis of its substantial control of the industry." (p. 98.)

The next official comment on resale price maintenance seems to have been in the Report of the Royal Commission on Prices, 1949. In Volume I, at p. 28, that Report said: "Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor to be a happy relief from the unending struggle against the harsh correctives of the free market system. But the solution we think is illusory. It not only vitiates the spirit of enterprise by which all commercial and industrial life is nourished, it deprives the consumer of his right to seek out and patronize the more efficient distributors, namely, those who over a period of time can offer goods for sale at prices lower than their competitors." At p. 41, it added: "Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative. In view of the extension of this practice, we recommend that the Combines Investigation Commission give careful study to this problem with a view to devising measures to deal with it."

In its second volume, at pp. 256-9, this Report said: "Resale price maintenance has been referred to frequently both in this report and in the evidence as a practice which is responsible for increasing costs of distribution... A few firms... admitted establishing resale prices on such products as shirts and shoes.... It is evident that the practice is growing and is having a significant effect on the prices which the public has to pay for goods in a number of lines of trade.

. .In the United States the Miller-Tydings Act has legalized resale price maintenance in interstate commerce. We consider it would be unfortunate for Canadian consumers if any such proposal were to receive legislative encouragement in this country. Indeed positive action to discourage the practice or at least to remove its undesirable features would, we think, be more in the public interest."

The Report then quoted the then Commissioner under the Combines Investigation Act against resale price maintenance, and concluded: "Our examination of the problem of resale price maintenance has necessarily not been complete enough to permit a conclusion as to all the circumstances in which the practice should be declared to be against the public interest. examples we have examined, it appears that as a whole the disadvantages to the buying public greatly exceed any possible advantages. In certain circumstances, as, for example, a combination of dealers arranging with a manufacturer to adopt resale price maintenance, or where several manufacturers jointly agree upon such a policy, the Combines Investigation Act in its present form would appear to provide a remedy for undue restriction. A different situation arises where a single manufacturer, acting independently of other manufacturers and without pressure from dealers, requires all dealers to maintain the minimum resale prices which he establishes. Price competition amongst dealers in the sale of these particular goods is thereby seriously limited if not eliminated. In dealing with such a case, the effect on the public would be determined by consideration of many factors, including the volume of the

manufacturers' sales of these goods in relation to the total sales of goods of the same class and kind, the availability of other similar goods which are not subject to such restriction, and the extent to which the customs tariff may permit or prevent imported goods from competing with the price-protected lines. Similar consideration would apply where the practice takes a less definite form and is one of suggestion rather than of insistence.

The Committee will have noted that in a number of cases of resale price maintenance dealt with in reports under the Combines Act, the practice has been the work of an association or group, and, as such, covered by the present terms of the Act. This, however, was not true of some of the cases in the P.A.T.A. Report, nor of the action of Imperial Tobacco, American Optical and Eddy Match. The Congress believes it is not true of various other cases. For these, if the practice is judged undesirable, new legislations, in the terms recommended by the MacQuarrie Committee, would be required.

Is the practice of resale price maintenance by an individual manufacturer

undesirable? The Congress thinks it is.

Unmistakably, resale price maintenance limits competition. If the basic assumption of the Combines Investigation Act is correct (and it has apparently been accepted by Parliament and by the electorate, which continues to re-elect the party responsible for it), then anything which limits competition is, on the face of it, at least suspect. The burden of proof that a restrictive practice is desirable rests on those who advocate it. The Congress has examined the arguments of those who advocate or defend resale price maintenance, as presented in the MacQuarrie Report, in the British Statement on Resale Price Maintenance (White Paper of June 1951), and elsewhere, and is not impressed.

The objections to resale price maintenance are excellently summed up in the British Statement: "There is plenty of evidence that the costs of trading vary considerably from one shop to another; indeed it is obvious that this must be so. One shop carries a wide range of stock, runs an expensive delivery service and gives long credit; another concentrates on quick-selling lines and trades on a "cash and carry" basis. Both shops may serve the public well but it is clear that they are providing two different kinds of service and that one costs more than the other. For every £1 of sales he makes, the first shopkeeper may spend 5s. in costs whereas the second spends only 4s.; yet on all goods which are price-maintained both shopkeepers must take the same gross margin of profit to cover these different levels of cost.

"In the Government's view these differences in trading costs should be reflected in differences in prices to the public. Some people prefer to trade at a shop which delivers their goods and allows them credit. It is reasonable that, if this kind of service costs the shopkeeper something extra, they should pay for it in the prices of the goods. Other people are content with a lower standard of service and if it costs less they should pay less. The Government is expressing no view as to whether any one standard of service is 'better' or socially more desirable than another. The Government holds, however, that the public should have a free choice between different standards of shop service at different prices just as they have a free choice between different qualities of goods at different prices. This free choice is at present eliminated in a wide field of trade by the operation of resale price maintenance.

"It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that in order to attract more customers a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing. This has two important consequences. First, the result may be that more service is being provided in shops than people would want to pay for, if

they had the choice of less service and lower prices; clearly we cannot well afford to waste resources on services that are not wanted. Secondly, the result may be to slow down improvements in the efficiency of distribution generally. A trader who by improved methods achieves the kind of service which the public want at low cost should be imitated to the general benefit of his trade; but the incentive to imitate and then outstrip his improvements does not exist unless, by passing on the benefits of his enterprise in lower prices, he can attract customers away from the less enterprising.

"To sum up, the Government sees two main objections to the practice. First and foremost, it has the economic effect of stifling competition and of preventing shopkeepers from making price-reductions which they may be able and willing to make. Secondly, the methods of enforcement described above involve a private system of law and punishment allowing no appeal to the established Courts of Justice." (Summary in *Cartel*, July 1, 1951, pp. 30-31; a publication of the International Co-operative Alliance.)

The British Statement deals with several defences of resale price maintenance:

- (1) "Housewives like fixed retail prices because they find it convenient to know in advance how much they will be charged for branded goods". The Statement observes, temperately, that it is "difficult to believe that when housewives learned that goods which had been on sale at (say) a shilling could be obtained in some shops for (say) elevenpence they would prefer to pay the higher price. (It is worth noting, too, that if this argument were right, traders could have nothing to fear from 'price-cutting' since the public would prefer to make their purchases at shops charging the full price)". It did not add, as it might have, that this particular defence of resale price maintenance is akin to the defence of hunting on the ground that "the fox likes it".
- (2) Branding and fixed resale prices must go together. The Statement points out this isn't so.
- (3) "If manufacturers were to allow their branded goods to be sold at reduced prices, people would suspect that the quality was inferior. This is very doubtful; most branded goods are put up in a standard format. Few people would expect two bicycles of the same make or two copies of the same book or two tins of the same brand of fruit or boot-polish to differ in quality merely because they were sold at different prices in different shops. In any event, . . . they could always pay the higher price if they so desired".
- (4) "The prices of many branded goods are not excessive in the 'average' shop. The point, however, is that no single price can be 'fair' for all shops, since the services given and the costs of trading vary from shop to shop. Different qualities of service should vary in price like different qualities of goods".
- (5) "Resale prices fixed by manufacturers have in some cases been below what the goods would fetch in the open market in times of scarcity . . . Nothing now proposed by the Government, however" (in this country by the MacQuarrie Committee) "will prevent manufacturers from continuing to fix maximum resale prices".
- (6) Resale price maintenance is essential to prevent the "loss leader". "The argument fails, in the Government's view to take account of the differences in conditions between the years of deflation and unemployment in which the practice of resale price maintenance was built up and the present era of full employment and a high level of demand . . . The Government does not believe that in the absence of resale price maintenance extreme forms of price-cutting and other means of forcing sales would be likely in conditions of full employment to become a widespread or general feature of trading.

"Secondly, the Government believes that the argument to a large extent assumes the existence of resale price maintenance and would cease to be valid in its absence. For example, a background of rigidly maintained prices is just what the price-cutter needs to make his 'loss-leader' tactically effective. If it were general for prices to vary somewhat between different kinds of shop, no single price reduction would stand out in a spectacular way. Moreover, where variations in price are normal, it becomes impracticable for traders to respond to a particular price-cut by ceasing to stock the line of goods concerned and pushing some competing brand instead. The assumption is that competing brands will also be reduced in price by some retailers who can afford to sell at smaller margins." (Summary in Cartel, July 1, 1951, pp. 31-33.)

The Congress wishes to draw the Committee's attention also to the price-reductions on thousands of articles last summer in New York when the Supreme Court invalidated the "non-signer" clause in state "fair trade" Acts. The total effect on the American cost of living was small, but, again, "Small mercies thankfully received." It is at least possible that, if the MacQuarrie Committee's recommendations are adopted, Canada also may have a considerable number of small price reductions: a few drops of water

in a thirsty land.

The Government and Parliament of Canada have apparently set their faces like flint against public control of prices. Yet they have tolerated for years private control of prices by individual firms, "behind closed doors," as the British Statement says, "and without any supervision by the courts or by Parliament." The Congress thinks it is time this paradox was ended. If it can't be ended by imposing public price control in the public interest, let it be ended by stopping, or trying to stop, private price control in the private interest. If we must have "free enterprise," let us have it really free and really enterprising, for retailers and consumers, not just for manufacturers. The Congress reiterates that it is not very sanguine about the effectiveness of attempts to restore competition and make the "free economy" really free. But that seems to be what the people want. Anyhow, they voted for it. Surely it is high time to let them have it, or at least to try.

Respectfully submitted.









HOUSE OF COMMONS

D.

Fifth Session—Twenty-first Parliament 1951

CAIXY 2 -51 C54

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE No. 3

WEDNESDAY, NOVEMBER 21, 1951

WITNESSES:

Mr. E. Swenson, President, Allied Beauty Equipment Manufacturers' and Jobbers' Association, and Mr. M. E. Corlett, Counsel for the Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951



MINUTES OF PROCEEDINGS

Wednesday, November 21, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, the Honourable Senator Beaubien presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Fogo, Hawkins, Horner, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Dickey, Fleming, Fulton, Garson, Harkness, Harrison, Jutras, MacInnis, Mott, Murray (Oxford), Roberge, Shaw, Stuart (Charlotte), Thatcher.

In attendance: Mr. E Swenson, President, Allied Beauty Equipment Manufacturers' and Jobbers' Association, and Mr. M. E. Corlett, Counsel for the Association.

Mr. Corlett was called, tabled a brief on behalf of the Allied Beauty Equipment Manufacturers' and Jobbers' Association, which is printed as *Exhibit A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Mr. Swenson was called and questioned.

The witnesses retired.

At 6.20 o'clock p.m., the Committee adjourned until Thursday November 22, at 10.30 o'clock a.m.

A. L. BURGESS, Clerk of the Committee.



EVIDENCE

NOVEMBER 21, 1951 3.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum, if you will come to order. We have here today Mr. M. E. Corlett. May I ask members of the committee who wish to ask questions to kindly raise their hands. That will make it easier for the Chairman of the Committee to see and recognize you.

All right, Mr. Corlett:

Mr. M. E. Corlett, Counsel, Allied Beauty Equipment Manufacturers' and Jobbers' Association, called:

The WITNESS: Mr. Chairman and honourable members, the Allied Beauty Equipment Manufacturers' and Jobbers' Association is a national organization in Canada of manufacturers and distributors of beauty supply products being sold to hair dressing establishments and barber shops throughout Canada. To that extent this association is different from Canadian Toilet Goods or the pharmaceutical association where the products of their members for the most part are sold eventually across the counters to the consuming public.

Now, gentlemen, I am appearing as counsel. We have prepared a brief which was submitted to the clerk of your committee and I believe there were sufficient copies to be distributed, and without wasting the time of the committee—I believe I am precluded from so doing anyway—I do not propose to read it. All the information setting forth the views of this association is there. With me today is Mr. Swenson, Toronto, who this year happens to be the president of this association. He is a manufacturer of beauty supply products and has been in the business for approximately 30 years, and I think that there are many questions of a technical nature which he will be able to answer far better than I could, and I presume that you will direct such technical questions to him.

Now, to merely summarize, if I may, what we set forth in our brief in a nutshell, I would say that the association is opposed to the recommendations of the MacQuarrie committee as set forth in the interim report dated October 1, which dealt solely with this question of resale price maintenance. And when I say that I want to make it clear that anything I have to say or that Mr. Swenson may have to say later will relate strictly to the beauty supply industry. We do not presume to know just what other industries may feel about it; but we feel that this is one of the weaknesses in the committee's report, that the ins and outs of various industries are such that in our opinion it is not possible for one to say that resale price maintenance should be abolished in all industries; or, conversely that it is advantageous or helpful in all industries. All we know is that so far as the beauty supply industry is concerned—and it is made up of approximately 65 manufacturing firms and 75 distributing firms which we know as jobbers—in so far as that industry is concerned, resale price maintenance is necessary in our view for the industry to carry on.

Now, I would like to say, first, that as far as this association is concerned, it is true from what we read in the press that we were aware of the fact that the MacQuarrie committee had been set up in, I believe it was June of 1950.

We knew that on this occasion their terms of reference were far wider than this question of resale price maintenance; but this association was never asked directly by that committee to submit any views that it might have on this question of resale price maintenance or any other matter on which they wanted information. It was not until the speech from the throne was read in parliament that we were aware that the committee had made certain recommendations. In view of the recommendations made in their report we respectfully submit that perhaps the committee might have been better advised to have made sure that they canvassed the opinions of people who were directly concerned with this question. On the strength of the throne speech and subsequent developments in this parliament this brief was prepared.

Now, perhaps I could just briefly summarize the reason why the association is in favour of resale price maintenance. Firstly, we do not take the position that resale price maintenance in so far as it affects this industry has the effect of eliminating competition. The competitive element in the beauty supply industry is very strong. By way of example, I understand that the various manufacturing firms manufacture in Canada at least 25 types of shampoos that have fixed resale prices ranging from \$1.25 to \$7.50. Now, surely, there is competition; although, it is true each individual firm will have its own resale price maintenance policy. Since it does not take a tremendous amount, by way of capital to go into this type of business, it is very easy for substitute products to appear. If, for instance, a fixed price of some manufactured product got out of line it can be corrected by the appearance on the market of a substitute product.

Secondly, this association favours resale price maintenance because in our opinion it tends to prevent what economists call economic concentration in the industry, which would undoubtedly occur if prices were free. Then we get into the question of loss leaders which the MacQuarrie committee recognized, and as soon as a system of selling loss leaders is started then the small distributor would be bound to be put out of business. I would commend to honourable members extracts from what I consider one of the strongest statements—

Mr. CARROLL: May I ask you a question there?

The WITNESS: Very well.

By Mr. Carroll:

- Q. Are not all the members of this beauty supply industry under the one organization? Are they not all controlled by your own organization?—A. I would not say "controlled". There are a few manufacturers and a few distributors who are not members of the association. But I do not think we could say that this association controls them. It could not control the policy of any one single firm.
- Q. But you are the loss-leaders, you are the found leaders in making these prices, and that kind of thing?—A. The association, you mean?
 - Q. Yes.—A. No, sir,
 - Q. How does it affect you people, then?

Mr. Swenson: We represent the different members and each member has the right to fix his own price. We do not at any time say yes or no, this is too high or too low.

The Chairman: Might I suggest to the committee that we shall make a great deal more progress if you will allow this gentleman to make his presentation, and then anybody who has taken notes will have an opportunity of asking questions. I think that procedure would be more preferable.

Mr. CARROLL: All right.

The WITNESS: Mr. Chairman, as I was saying, I wanted to draw to the attention of the committee extracts from an article written by the late Mr. Justice Louis D. Brandeis, of the United States Supreme Court, which appeared in Harper's Weekly back in 1913. Nevertheless, we submit the principles set forth in his argument are as pertinent today as they were then; and, then, as the honourable members know, Mr. Justice Brandeis I think knew as much about the workings of the American economy as certainly as any judge. Certainly he was no lover of big business, as is evidenced by his book "The Curse of Bigness".

The third reason why our association favours resale price maintenance is that in our opinion it lends itself to more orderly merchandising practices at all levels of the trade. Mr. Swenson may elaborate on this later on, but there was a time in this industry, prior to 1940, when the cut-throat practices were so prevalent that particularly the distributors, and to a certain extent the manufacturers themselves, were falling by the wayside, the stronger firms surviving and the weaker passing out of the picture. At the distributor's level I am advised that the situation became so bad that very few of the distributors were making a profit at all, and I presume under our free enterprise economy that unless a firm makes some profit then there is no object in being in business. As a result of resale price maintenance policy being followed particularly in the last ten years by individual firms the picture has changed somewhat.

Now, the fourth reason why we favour resale price maintenance is that it gives the necessary protection to the manufacturer in connection with the sale of his trade-marked or branded products. Firstly, we submit that the estab-

lishment of fixed prices creates a certain confidence in the public.

That is a point that is disputed, the MacQuarrie Committee relying, I presume, on the recent British White Paper on the same subject, but it is the opinion of people in this industry that that is the case, human nature being what it is, and to support that contention I would refer—in fact I have done so in the brief—to certain facts in the report of the Royal Commission on Price Spreads, 1935, where the committee—later changed into a commission—came to that conclusion.

Then more recently we know what happened in New York when certain department stores started cutting prices at the same time. While those sales were going on in Macy's and Gimbel's and perhaps others, certain manufacturers of the products concerned were advertising in the New York newspapers saying that the quality of their products had not deteriorated as a result of the slash in prices and, secondly, that they did not believe in that manner of merchandising but that there was nothing that the manufacturer could do about it.

Now, we submit that no rational manufacturers would do that unless there was a reason to believe that the public, whether rightly or wrongly, felt that a sudden slash in prices automatically meant a deterioration in the quality of the product. Secondly, as far as giving the manufacturer protection is concerned, we feel that in many cases the manufacturer acquires a certain property right. After all, where he is selling under a brand name he has to do the promotional work himself, that is, the manufacturer has to do it, involving expenses to him and in due course the distributor will get the benefit.

Now, I might say there that I understand that this particular advertising is not done so much in any general press or general magazines but by the direct mail type of advertising or in trade journals but, nevertheless, the manufacturer has to create the demand for some new products and in this industry because of the competition, new products are coming out all of the time.

Fifthly, although there is the element of the fixing of prices—we do not deny that here and when I say "we" I do not want to create the impression

that the association is saying that this is what will be done by the various member firms but I am speaking of each member of the association who would be doing his own pricing individually but as far as this concept of fixing price is concerned we submit that it is quite consistent with the concept of establishing a fair price. After all, certainly in an industry such as the beauty supply industry, the manufacturer surely must know better than anybody else what the price must be in order that he can make something by way of a profit out of the ultimate sale of his products. If he gets too far out of line he just won't sell that product at all. We were quite impressed in doing our research work in connection with the preparation of this briefand I would commend it to your attention—with the dissenting judgment of Mr. Justice Oliver Wendell Holmes in the Dr. Miles' Medical Company case. This case was before the United States Supreme Court—true, in 1911, and true, Justice Holmes' judgment was a dissenting judgment, but in view of subsequent legislation both state-wide and federally in the United States on the question of resale price maintenance, I submit that the reasoning behind Holmes' dissent is quite in keeping with and supports our contention that the concept of a fixed price in this industry in any case is quite consistent with the establishment of a fair price.

Now, the members of the committee at their leisure can look at various individual criticisms that we have made and they were honestly reached by members of this association with certain views stated in the report of the MacQuarrie Committee. For instance, the MacQuarrie Committee placed considerable emphasis on this recent British White Paper on resale price maintenance, but we also refer to a report of the Sankey Committee in 1931. They dealt with the same question and they reached the opposite conclusion. Also the MacQuarrie Committee placed emphasis on a book called "Industrial Pricing and Market Practices" by one A. R. Oxenfeldt, while we, rightly or wrongly, place emphasis on a book called "Price Cutting and Price Maintenance" (1932), written by Professors E. R. A. Seligman (Columbia University) and R. A. Love—his co-author—and which states that there is no unanimity of opinion on this question of price maintenance.

We felt that the MacQuarrie Committee surely in so far as it would relate to our industry did not place enough emphasis on the desire for certain services that the public wish, and they quote in the committee report at one point where they deal with British merchandising methods.

Now, certainly there is a vast distinction between the British merchandising method and the North American merchandising method in an industry such as the beauty supply industry. As an example, the MacQuarrie Committee stated, quoting the new British report, that the public would much prefer to dispense with some of the services if it meant a reduction in the cost of the article to them. That might be quite true in some industries for all we know, but certainly we know that as far as the beauty supply industry is concerned the public want and expect service, even though it costs money. We cite the Toni experiment as an illustration—this method of the permanent wave that can be given at home at a saving of \$3 or \$4 or \$5, as compared with the price that a lady would pay by going into a hairdressing establishment.

Admittedly, it was viewed with great concern when the Toni experiment came onto the market several years ago, but the intervening years have proved that in so far as the beauty supply industry is concerned they have not suffered appreciably at all; in other words, people are still interested in going into a shop and paying \$3 or \$4 or \$5 more, knowing they are going to have to pay more but knowing that they are going to get that added service which they won't get if they do it themselves. And we feel that that was the opinion that Professor Curtis had.

You will remember in the tobacco inquiry—that was in 1938—I have cited it and I am not going into it again, but you will remember that Professor Curtis had been retained by the Imperial Tobacco Company to make an economic analysis of resale price maintenance and he came to the conclusion that from an economic point of view—I think he said—resale price maintenance was an anti-social practice, but he qualified his opinion by saying that there were other factors which entered into the picture besides economic considerations when it came to a business reaching a decision as to whether they were going to do this or do that. We have shown that in our brief and I will not go into it further.

Lastly, in our brief we pointed out the trends in American legislation on this subject. After all, this is something that has been debated backwards and forwards in the United States now for some years, and notwithstanding official opposition to resale price maintenance the fact is that many, if not most, of the individual states have their own fair trade laws and in 1937 or 1938 the Miller-Tydings Act was enacted at Washington. This was really a proviso to or an amendment to what was formerly the old Sherman Act and which stated that a combine in restraint of trade was illegal.

Now, the scope of the Miller-Tydings Act has been whittled down somewhat by reason of a recent Supreme Court decision in Washington known as the Schwegmann case. Nevertheless, it is true the statute is still there. It is also true that from information we have obtained from affiliates of our association in the United States steps are afoot to enact new legislation when congress reconvenes in January to take care of the gap in some way or other that was created by the Schwegmann decision.

That is generally the view of this association, and we have set it all out in greater detail in the brief. If there are any questions that the honourable members would care to ask we shall to the best of our ability answer them. Mr. Swenson is the technical man in so far as this association is concerned.

Mr. CARROLL: May I ask a question?

Mr. Fulton: Mr. Chairman, is it not the practice for the committee counsel to ask questions first?

Mr. Phelan: When I learned there were two speakers to discuss this brief I took the liberty of having a discussion with Mr. Corlett and suggested he make a brief summary of the brief to save time, and then we would call Mr. Swenson and we would examine Mr. Swenson, and if it became necessary to question Mr. Corlett we would do it too. I thought it would save the time of the committee to adopt that practice.

The CHAIRMAN: Is that the wish of the committee?

Mr. Thatcher: I do not follow that. Do you mean that Mr. Swenson has a brief too?

The CHAIRMAN: No, he will just answer the questions.

Mr. CARROLL: If the questions I want to ask are not asked by the learned counsel I will have the opportunity afterwards.

Mr. Fleming: I will put my questions after Mr. Phelan has put his, Mr. Chairman.

E. Swenson, President, the Allied Beauty Equipment Manufacturers' and Jobbers' Association, called:

By Mr. Phelan:

Q. Mr. Swenson, will you state for the committee what your personal occupation is?—A. Well, personally I am a manufacturer. I manufacture electric hair clippers and sundry items for barber shops and I also manufacture

for the beauty trade in that I supply them with electric hair dryers as well as the different solutions that they use in giving permanent waves.

Q. And you are a member of this association?—A. Yes, sir.

Q. When did this association come into existence?—A. This association

came into existence about ten years ago.

- Q. By what method?—A. Well, a group of manufacturers and a group of jobbers decided that the conditions under which they were operating had left a sort of a chaotic condition in that there were so many different things that interfered with the smooth running of business and as a result the manufacturers were faced with a group of distributors who were not financially able to carry on and pay their bills. Therefore, it became necessary to have this organization in order to help them and direct them and show them how business should operate. The beauty business is not as old as many other businesses in this country. The beauty business—well, in 1921 there were very, very few beauty shops and in the intervening thirty years, of course, it has grown to 6,000. In the meantime, new shops and jobbers would come in to operate and they did not have sufficient experience and the manufacturers and the experienced jobbers could direct them in the right channels.
- Q. Well, to make it short, how did you organize your association—is it incorporated?—A. It is an incorporated organization.

Q. Under the Dominion Companies Act?—A. Yes, sir.

Q. As a non-profit sharing corporation?—A. Yes.

Mr. CORLETT: Pardon me, Mr. Phelan, for the sake of clarity. I think I myself made a mistake when I mentioned that to you this morning, but I checked and it was incorporated on February 21, 1940, under the Ontario Companies Act as a non-profit organization, being a company without share capital.

By Mr. Phelan:

Q. The commodities in which the association is interested and which are dealt with through the association are, I understand, both supplies and equip-

ment for beauty parlours?—A. And barber shops.

Q. Briefly, without enumerating all of them, what character of goods are included in the term "supplies"?—A. "Supplies" is anything that is really usuable, that you buy and use for a permanent wave, for example—a solution. That is a supply, but a permanent wave machine, that is equipment. A permanent wave machine would be used over and over again but supplies sufficient for a permanent wave, or a cold wave, come in bottles and are used, and that is "supplies".

Q. What else is included in the term "equipment"?—A. Permanent wave

machines, hair dryers and chairs—that is about it.

Q. That is, practically all that the beauty parlours and the barbers need by way of equipment and supplies come through your organization?—A. Cer-

tainly 95 per cent.

- Q. Now, what comprises the membership of this association? First of all, what is your total membership?—A. Well, we have a total membership of slightly over 100, say, about 105, of which there are 58 jobbers and 50 manufacturers; but combined with that there are 11 who are both jobbers and manufacturers.
- Q. I see. Are there any consumers entitled to membership in that organization?—A. No, no consumers.
- Q. And with how many consumers does your organization deal? When I say "consumers" I mean barber shops and beauty shops?-A. Well, there are 6,000 beauty shops and they might represent—each have two or three people in them on the average-
- Q. I am not interested in the number of people—just the number of concerns?—A. 6,000 or 7,000 beauty shops and 9,000 barber shops.

Q. So that you supply an outlet for about 16,000 concerns across Canada?-A. That is correct.

Q. And what proportion of the total production or consumption of supplies and equipment is within the control of your association?—A. Well, I would think that at least 90 per cent of the equipment and at least 75 per cent of the supplies come from manufacturers who are members of our association.

Q. And are distributed through the member dealers of the associa-

tion?—A. That is right.

Q. How many manufacturers are there outside the association?—A. Not very many—say two or three.

Q. And how many distributors are there outside the association in all

of Canada?—A. Perhaps ten or fifteen.

Q. So that about 95 per cent of the production and distribution is controlled through the association?—A. That is correct.

Q. Can you give us an idea as to the gross value of your distribution in a year?—A. I am sorry that I cannot supply that because the Dominion Bureau of Statistics has not set aside our group as a group that should be handled separately; we are thrown in, I understand, with the toilet goods

Q. Might I make an assumption or a guess? Would I be far wide of the mark if I assumed or guessed that each of your dealers, beauty parlors and barber shops, bought from you, on an average, goods worth \$500 a year?—A.

That would be pretty high for a barber shop.

Q. I am taking it on an average, supplies and equipment by both beauty parlors and barber shops?—A. It is hard for me to answer that question.

Q. From your personal knowledge would that be a reasonable assump-

tion?—A. Yes.

Q. So on that basis we get a total output controlled by your association in Canada of \$8,000,000 a year. Now, when the association came into existence who started it, the dealers or the manufacturers?—A. It was started by five individuals, two were manufacturers and three were jobbers.

Q. And where did the idea originate before the organization became incorporated, from the dealers or the manufacturers?—A. Well, I think a combination of both—some of the more successful jobbers and some of the

manufacturers.

Q. There is one question I forgot to ask you, so perhaps I will ask it now. Is my understanding correct that the entire production and distribution controlled by this association is under the price maintenance system?—A. Very nearly all.

Q. What percentage is not? Roughly speaking.—A. Certainly not more

than 10 per cent.

Q. So that 90 per cent of this total production and distribution is operating

under the price maintenance system?—A. That is correct.

Q. I was interested in ascertaining from you in whose mind the thought originated of having the association. Was it the dealers or the manufacturers or both?—A. Both.

Q. And apparently both agreed it would be a good idea?—A. Yes.

Q. Was the operation of retail price maintenance in effect from the very beginning of your association?—A. No, that was just a gradual development.

Q. Over how long a time?—A. Up until almost presently, it was a constant growth.

Q. So when you started the association in 1940, or whenever it was, do I understand that the larger proportion of your goods was outside the resale price maintenance policy?—A. Yes, sir.

Q. What percentage, when you started in 1941, of your production or distribution was under resale price maintenance?—A. I could only guess.

Q. What would be your judgment?—A. Perhaps half.

Q. And that has advanced now to 90 per cent?—A. That is right.

Q. And when it was started, or subsequently, as the practice has increased, who, in effect determined the retail sale price?—A. Each manufacturer determined that by himself.

Q. Well, when the members meet, as they must have met at meetings of the association and otherwise, what was discussed with respect to prices?—

A. prices are never discussed at our meetings.

- Q. Never discussed?—A. Never discussed at our meetings. That is left entirely to the manufacturers. At no meeting do we ever come together and say "Let us fix such and such as the minimum price" or "Let us fix such and such as the price of some item". That is always determined individually by each manufacturer.
- Q. If a dealer had an objection to a particular price that a manufacturer fixed and wanted some redress or some change in the price, would that not be a good opportunity for discussion and negotiation at those meetings?—A. It could be but it is never done.
- Q. What do the members discuss as between themselves? What do the dealers discuss as between themselves when you do meet, or what do the manufacturers and dealers discuss?—A. Well, the dealers would probably discuss fixing rates of commission for salesmen. At the present time they have been shipping almost all their goods to outside points "prepaid". They would like to change that to "collect", but that is difficult to decide: should we or should we not.
- Q. Well, now would that be all that the dealers and the trade would discuss at meetings?—A. That would be about all.
- Q. And what policies of trade would manufacturers discuss at these meetings?—A. Well, the manufacturers would probably discuss how to control certain deals that they have. For example, they will have a special deal for a certain length of time—I am just taking up a point that was brought up recently—and they discuss when should that deal come off. For example, it is a special deal and it involves a little extra merchandise: should it stop on November 30 or should a dealer be permitted to buy extra and carry on and sell it in December.
- Q. Then as I leave the meetings of your association, I understand that there would be no discussion between the dealers and manufacturers as to trade policies?—A. That would be correct.
- Q. What about the customers, that is, the barbers and the beauticians? Are they under any control as to their resale prices?—A. Please say that again.
- Q. Your customers, the beauty parlors and the barber shops, are they under any control as to their resale prices?—A. None whatsoever. The barbers have an organization of their own and they do get together and appeal to whatever government organization it is that allows them to set a price and then they try to set, say, a charge of 75 cents for a haircut.
- Q. I am not speaking of the sale of service. I suppose there would be little of your supplies retailed—they would be used by the beautician and barber?—A. That is right.
- Q. So there would be no necessity of imposing any retail price on the consumer?—A. That is correct.
- Q. You told us at one point that this method and this association came into existence by reason of chaotic conditions that existed in 1941. What were those chaotic conditions that brought about the association?—A. Well, it was just the condition, as I explained just a minute ago, that there were too many jobbers operating and not knowing how to operate, and as a result they were throwing everybody else out of kilter. They did not know what the business

was all about, because, you see, it has been a new business with all of us; it has only grown really in 20 years, and that period in business life is, comparatively, a short one.

Q. Would you be specific? When you say that these jobbers were throwing business out of kilter, would you be specific? What were they doing to which you took exception?—A. For example, on a hair dryer; they would go out to sell to a shop a new hair dryer, and they would quote almost any kind of price, not knowing anything about the re-sale price of the old hair dryer.

Q. Would the consumer get a higher price?—A. No. But perhaps the

consumer would, temporarily, get that advantage.

Q. So that would be a chaotic condition which brought the organization into existence, would it?—A. Yes.

Q. We have the association operating under a system of retail price maintenance. Let me see if I understand some of the consequences of that system. Would it be correct to say that the dealer or jobber was obliged to distribute at a price predetermined by the manufacturer?—A. That is correct.

Q. He has no choice in the matter at all?—A. Yes, he has a choice in that if he takes a shampoo—I sell a shampoo at \$5.85 a gallon—he is under no compulsion to take that shampoo. If he wants to buy a \$3 shampoo, I will give him the names of 20 other manufacturers who will sell it to him.

Q. But suppose he wants to buy your shampoo, he has to buy it then at

your price?—A. That is correct.

Q. And sell it to the consumer at the price which you have determined?—A. Exactly.

Q. And he has no choice of the price?—A. That is right. But he comes to me of his own free will.

Q. You say he comes to you of his own free will. But is it not a fact that he cannot get supplies from you unless he agrees to your terms of resale? Is that correct?—A. Yes. I will not sell him unless he agrees.

Q. You say you will not sell to him unless he agrees; and if there is any resale of the product, he must, in order to get supplies from you, maintain the resale price that you set?—A. That is correct.

Q. He has no choice in that matter at all?—A. No.

Q. And if he agrees to sell it at your predetermined price, what happens should he fail to carry out his agreement? What are the consequences to him?—A. Then he would—I suggest to him, for example: suppose he wants to sell a shampoo at \$5, and my shampoo is \$5.95; I would suggest to him that he buy a shampoo which he can sell at \$5, and I can supply him with the names of 20 manufacturers from whom he can buy.

Q. But suppose he wants to re-sell your shampoo because of the demand for it, and suppose he sells it at less than the predetermined price?—A. Then,

I would not sell him anymore.

Q. He is out of the market then, so far as you are concerned?—A. That is correct.

Q. Is there any system of penalties by which the dealer is penalized beyond the fact that he is boycotted with respect to your goods?—A. None whatsoever. He can buy from any other member of the association or he can buy outside of the association.

Q. You speak of a price spread, I think, of between 39 and 40, and you say that the present spread to the consumer has not been more than 15 per cent?—A. That is correct.

Q. That is a correct statement?—A. That is substantially correct.

Q. How do you account for maintaining the price spread at what would appear to be a low level? How do you account for maintaining it at that level?—A. Well, it is one of those things which competition forces you to do. In the intervening 20 years, I am thinking of my electric hair clippers which sold

with practically no increase in price. That was due to the fact that the country was becoming electrified; and it is due now to the fact that the farmers are becoming electrified.

Q. Are you telling me that your production has increased?—A. Yes, that

is right.

Q. You say that increased production would explain the small price

spread?—A. That is right.

Q. Let me get an example of how it operates. Take a shampoo product which at the factory level would cost the manufacturer \$1. What would be the price of that shampoo to the dealer? I notice that you have certain suggested mark-ups of 30 and 50 per cent and also a dealer mark-up of 50 and 40. Let us take it at the 50 to 40 per cent mark-up.—A. The shampoo which would cost me as a manufacturer, \$1: I would price that at \$2 to the dealer.

Q. You say \$2 to the dealer?—A. Yes.

Q. What would it cost the consumer, the beauty operator or the barber?

-A. It would probably cost her \$3.33.

Q. You are saying that an article which at the factory door costs \$1 reaches the consumer at \$3.33?—A. Let us assume that we charge a price of \$2 for a gallon of shampoo, there is then involved a 25.9 per cent government tax amounting to 52 cents leaving \$1.48 which means that I operate on a margin of 48 cents, after putting in an investment for labour and material of \$1. And the same way for the jobber with respect to shampoo in gallons, a gallon of shampoo including container weighs 15 pounds and it is going to cost him 15 cents to get that to his door, and it will cost him another 15 cents to deliver it to the hairdresser.

Q. Do you think that shampoo would be any cheaper to the hairdresser under a system of free competition at the consumer level?—A. It could not

be any cheaper. It is too cheap now.

- Q. Well, who would you say benefits by this system? I suppose there are three people, in your case; the manufacturer, the dealer, and the beauty parlor. Tell me how each one benefits by that system, if there is a benefit?

 —A. By the benefit of a resale price maintenance?
 - Q. Yes. First of all, does the manufacturer benefit?—A. Yes.
- Q. How?—A. He knows pretty well that he can develop a market; that he can go out and promote his name and build up a business. If he, like myself, opens a business and works at it for 30 years, developing and promoting that name, he wants to know that that name is going to be as good today as it was, or at any time; and you cannot get that effect if you cannot maintain your price.
- Q. You have got to maintain your price in order to maintain your reputation?—A. I am sure of that. I am sure that if I did not have a price maintenance policy, if price maintenance was not allowed today, and somebody could take my product and sell it for half price, I would lose over night half of my dealers. I would lost half of my business just because one individual wanted some fleeting momentary gain.
- Q. Although it was sold in the same package in which it was sold on the street yesterday, in a package which would be known to the trade?—A. That is right.
- Q. Tell me how the dealer would benefit from a system of resale price maintenance?—A. The dealer benefits in a similar way when he goes out and offers these goods to the hairdressers. I am thinking of the Wahl clipper; when he sees that clipper costs \$15.50, and provided that he wants one, he will say: yes, I will take it. But if there are four jobbers coming along with four different prices, he has to spend time with four different people in order to determine which one of them is going to sell to him the cheapest. That is all

a waste of time on the part of the dealer, or the dealer-salesman. And there is the same waste of time on the part of the hairdresser just for the purchase of one article.

Q. So you say that the dealer would benefit because it would mean saving time to him?—A. Yes, saving time and money too.

Q. And would the beauty parlor operator and the barber benefit as well, through a saving of time involved in negotiating for supplies and equipment?—A. Yes, and it would apply with respect to these different things which we have pointed out in the brief.

Q. Would you just state where the beauty parlor would benefit by the system of resale price maintenance, and where the barber would benefit, specifically?—A. Specifically? Well, it means that when he is able to buy something with a branded name, immediately he knows, or she knows that it is good. Suppose you take a gallon of shampoo and put it on the table. Even a hairdresser who has had experience would have no idea of what the value of that shampoo is until she has finished using it. Then she knows, and not until then does she know what it is. But, if she buys my product with my branded name, and she knows I have been in business for thirty years, she also knows that the real value is very close to that figure, I am sure.

Q. Do you think that is a benefit that comes from the quality of your goods or a benefit that comes from the resale price maintenance system?—A. It comes from the resale price maintenance system, because without that I could not have stayed in business for thirty years and developed it.

Q. That may be a benefit to the manufacturer, but I do not think you have told me where it is of benefit to the beauty parlour?—A. The beauty parlour has to take a chance. Somebody puts out a gallon of shampoo and says it is worth \$3, but it might only be worth \$1. If the operator pays \$3 she loses \$2. Nor does she know she has lost \$2 until after she has used the shampoo. If she buys my shampoo—we have been in business thirty years and she trusts me—and she just goes ahead.

The CHAIRMAN: Mr. Beaudry, did you wish to ask any questions?

Mr. Beaudry: Does not Mr. Fleming have a prior right? Mr. Fleming: I think Mr. Carroll has some questions.

By Mr. Carroll:

- Q. The questions I was going to ask were just along the line of what this organization consists of. It is satisfactory to me to know that it consists of the very people who are dealing in this matter. There is, however, just one question I want to ask. Did you say the only shampoo you sell is sold at \$5.95?—A. No, I said we have a shampoo at that price.
 - Q. A shampoo?—A. Yes.
 - Q. You have different kinds of shampoos?—A. Yes.
 - Q. What is your cheapest?—A. \$3 a gallon.
- Q. \$3 a gallon?—A. Yes, although I still have some in pound jars that is \$2 a pound.
- Q. What does it cost you to get that \$5.95 shampoo?—A. How much does it cost me?
- Q. \$1, I understood?—A. No, no, that would be the shampoo we have at \$3—which costs \$1.
- Q. But how is it there is such a spread in the cost to you of shampoos—from \$2 your sale is \$5.95? You are standing on your reputation of giving splendid shampoos, now why the difference? They are all made of the same material, are they not?—A. Oh, no, it is not made of the same material. I will tell you this. There is exactly the same amount for \$5.95 or \$6.00 but the

operator will get more than twice as many shampoos as from the shampoo at \$3. So, your shampoo is never priced by the gallon—the hairdresser should not

do it that way. It is how much per shampoo.

Q. I am not talking about what the hairdresser is charged, but as I understand it you sell your \$1 shampoo for \$5.95?—A. I did not give you the price of that. I gave you the price of the \$3 shampoo. I said that in that priced shampoo I put a dollar's worth of material and labour, and I get \$2 for it. Out of the \$2 I turn over 52 cents to the government so I get 48 cents. Is that too much of a mark-up?

Q. I am not suggesting that at all, but my difficulty is that you are not supplying the hairdressers then with equal quality of shampoo?—A. I do not

follow you.

Q. Well, you are charging some \$3, and you are charging some \$5.95?—A. Yes, but I did not say the \$5.95 shampoo cost me a dollar.

Q. You did not say you did?—A. Oh, no.

Q. But what makes the difference?—A. The difference is entirely in the ingredients you put in there. You have certain ingredients and the more concentrated they are the higher the cost per gallon. The more water you put in the lower the cost per gallon.

Q. Just like liquor?—A. What?

- Q. Well, to keep up your reputation why should you not make good shampoos and sell them all for \$5.95?—A. Why don't I?
- Q. Yes?—A. Because some people insist that all they want to pay is \$3 Their initial investment is going to be \$3 period. Therefore, we want to accommodate them.
- Q. In connection with the reason for the organization of your company, you gave as your first reason the fact that you were not getting paid by the jobbers?—A. That is right.
- Q. That is one of the reasons why you did not give in your examination?—A. Yes.

By Mr. Fleming:

- Q. Mr. Swenson, you indicated in reply to one question by Mr. Phelan that this association is supplying 7,000 hairdressers and beauty parlours and 9,000 barber shops throughout Canada. Is it the association or the members of the association that do that?—A. I stand corrected. It is only the members. The association has no contact at all with the hairdressers. The association is only connected with the members of the industry and they are only manufacturers and jobbers.
- Q. As I understand, the association does not buy or sell—does not trade?
 —A. Correct.
- Q. Then you indicated within the membership of the association and the line of supplies and equipment that the members handle, today the practice of resale price maintenance applies to approximately 90 per cent of such equipment and supplies. Have you any knowledge of the prevalence of the practice of resale price maintenance among the manufacturers or jobbers who are in the same line of business but who are not members of your association?—A. No, I do not know that.
- Q. Have you any knowledge at all as to whether the practice of resale price maintenance is carried on by any of them?—A. I think the manufacturers do not follow that.
- Q. Can we take that as general?—A. But you see there are only two or three manufacturers outside of the association.
- Q. Can we infer that none of them, of the two or three or whatever it may be, practice resale price maintenance?—A. I think you can infer that.
- Q. Then you mention in the brief that this is a very competitive business? —A. True.

- Q. And you indicated in reply to one of Mr. Phelan's questions that over a period of the last eleven years, from the time your association came into existence, the proportion of supplies and equipment on which resale price maintenance has applied has increased from roughly 50 per cent to roughly 90 per cents?—A. Yes.
- Q. What has been the trend within the members of the association as to competition in that period, among the members of the association?—A. Have the number of manufacturers increased?

Q. I am thinking either about the numbers of those engaged or the condition or degrees of competition?—A. Both have increased. The number of manufacturers has increased and the number of jobbers has increased.

It is a very simple thing to become a manufacturer in the beauty business and a very small capital outlay is required. Any business where a small capital outlay is required in a very short time becomes a very competitive business, because a lot of people want to go into business and they turn instinctively to those businesses where a small capital outlay is required. There is no point in trying to be competitive in the automobile business; you cannot do it—but in the beauty business it is a simple thing. Overnight you can be a manufacturer and, there you are—established in business. That makes for very competitive conditions and it is impossible to do anything except work on a small margin.

- Q. Just on the matter of numbers, in paragraph 5 of your brief, on page 3, you say:
 - ". . . there are today approximately 65 manufacturers of beauty supply products which are distributed to hairdressers by approximately 75 dealer organizations."

You indicate that represents a substantial increase in numbers over the past eleven years?—A. Yes.

- Q. Can you indicate the proportion of increase by telling us about how many manufacturers and dealer organizations there were engaged in this business say in 1940, Mr. Swenson?—A. I cannot give you that but I can go back further and say that in 1921 there were practically no beauty shops. In 1951 there are 6,000.
- Q. I just wondered if you could give us an indication over the past decade?

 —A. No, I cannot give you that.
- Q. You mention the numbers engaged, but what do you say about the range of products they are selling—that the manufacturers on the one hand are manufacturing and that the dealers on the other hand are handling? Has there been any increase in the range and variety of the products handled?—A. Yes, there is always an increase in the number of products.
- Q. Has that been a steady sort of increase?—A. It has been a steady sort of increase.
- Q. What has been the trend in the margin of profit in this ten year period?

 —A. Always downward.
- Q. Always downward? Are there any exceptions?—A. I would not know of any. If there are, I have missed something.
- Q. Are there any cases in this business where the manufacturer has his own outlets which he actually operates himself?—A. Yes. There is one very large organization that operates their own outlet.
- Q. You would call it I suppose, in keeping with common practice, a chain?—A. Cartel, isn't that the word?
- Q. Well, I do not know, that is an invidious expression; we had better not call anybody that. I wonder if you would be good enough to indicate how the type of competition which that particular manufacturer offers both to other manufacturers and to other dealers compares with the terms upon which

your manufacturers and dealers can meet him?—A. Well, it is competition that we can meet. I suppose you would think that because you had eliminated one of the group, the distributor, that you could then sell at far less, but he still has to operate a distributor group of his own and in that way we are all very competitive in spite of the fact he manufactures practically all his own material and sells it through his own organization to the hairdressers; but, nevertheless, we are all competitive. Simply because you think you can miss one step—you can't miss that step, there must be a distributor, whether he operates as his own distributor or sells to another.

Q. It is obvious that particular manufacturer is going to establish a price at which his outlet sells the product. If a ban were placed on resale price maintenance and applied to your trade what is going to be the effect upon the terms upon which your manufacturers and dealers on the one hand can meet competition of that kind, and upon a manufacturer following the other plan?—A. Well, it would not change, that would not change the situation. This manufacturer who sells direct to the hairdresser, he would not change his prices. He has a competitive price today and he if anything—I don't know, he might raise it, or he might lower it; but there is nothing in changing the legislation which would change that situation.

Q. Now, what I am thinking about is the possible effect, if any, and I think this may be of interest to the committee—the effect on the terms upon which your manufacturers and dealers operating that resale price maintenance

system would meet his competition?-A. I just don't follow that.

Q. Perhaps I can put it a little more clearly then, because I think it is of importance.—A. We have an organization now that is manufacturing and selling direct to the hairdressers. Selling at a certain price today.

Q. You get one individual company that combines the functions of manu-

facture and distributor.—A. Yes.

Q. On the other hand, you have some 65 manufacturers and 75 jobber

organizations who practice resale price maintenance?-A. Yes.

Q. Now, assuming that parliament passes legislation to prohibit the practice of resale price maintenance, it would affect your 65 manufacturers and your 75 dealer organizations and still presumably will not affect the manufacturer who has his own outlets for distributing. What is going to happen to the terms upon which you dealers and manufacturers are able to meet the competition of that manufacturer who does his own distributing?—A. I am of the opinion that if legislation were enacted such as you say that the conditions would remain identical. I think that in our industry we would still maintain resale prices. I mean that there is something that is economic. That is what I mean. You are not going to change your prices because you change your legislation; if you did, then the economic set-up is wrong. If anything, our economic set-up is wrong now; indeed our prices are not high enough. If you were talking about an industry wherein all the prices are too high, then, your legislation might have some effect; but here is an industry where prices are too low.

Q. Mr. Swenson, in fairness to you I offer this for your comment. The inference from your last answer sounded very much as though, assuming that parliament did prohibit the practice of resale price maintenance, that not-withstanding that it would be practiced; that, obviously, is not what is meant in your answer?—A. No. What I meant is that if the manufacturer is now selling an article at a fixed price and if that price is a fair price legislation will never change it; if that same dealer is taking my mark-up or my discount—because I have a discount system—and he is working on that and he finds that to be a fair discount to work on, then he is not going to change it whether there is legislation or not. What I really meant to point out is this: here is

an industry and if there is legislation enacted it will not change the prices because the prices are fair as they are now.

Q. Then, if parliament should pass this legislation it sounds to me as though you are saying it would not have very much effect on prices in your industry?—A. Yes. That is correct.

Q. I think you mentioned in reply to a question by Mr. Phelan, you gave an example of some dealer or distributor proposing to sell below the price stipulated. Have you had occasions in your experience where dealers have tried to sell above the prices you have stipulated, or that other persons engaged in the same line of business have done that?—A. My own personal experience has been wonderful. I have had excellent co-operation from the dealers all the way through, in the 30 years I have never had to cut off any dealer because he did not maintain my price, but there have been times when I have had to caution some of them.

Q. Then, obviously, one infers, by the answer which you gave to Mr. Phelan that you had, or some of your fellow manufacturers had had experience with

dealers seeking to sell below stipulated prices?—A. That is right.

Q. Are there any cases where you have ever found distributors desiring to sell above stipulated prices?-A. Yes; well, there have been dealers who wanted to have us put our prices up simply because in any industry in which there has not been a price increase in the last ten years you do run into situations that are difficult. For instance, we have salesmen out on the road. You see, our beauty supply business is not like other retail businesses, where the purchaser comes to the show room and buys. In this business the dealer must send out salesmen, and the road cost for salesmen has been constantly going up, increasing—such things as the cost of operating his car, the cost of hotels, the cost of meals-all that sort of thing has gone up, and yet the salesmen's commission has remained the same; virtually, we have maintained prices below what they should be.

Q. I can understand the margin of percentage being maintained if the volume is increasing. What has been the trend of prices as distinguished from the trend in respect of mark-up?—A. In practice the only increase we have had in our prices has been by the amount of the increase in federal taxes.

Q. Well then, one other question, on page 2 of the brief you direct attention to your desire to maintain a condition of orderly merchandising. That is in paragraph 3. Then you go on to say: "In the past, this industry has suffered severely from cut-throat price practices which were prevalent and which caused numerous bankruptcies and the forcing of many dealers out of business". Have you any statistics bearing on that point, Mr. Swenson?—A. I could dig them up.

Q. I suggest, Mr. Chairman, it would be of interest to the committee to have some statistics on that point. Perhaps Mr. Corlett will be willing to extend his researches on that point. Then, down at the bottom of the same page, we have the statement, "The manufacturer, from past experience, knows that many of its branded articles would be used by dealers as loss-leaders if the manufacturer were to lose control completely over resale prices". What has been the experience in this trade with respect to loss-leaders before the system of resale price maintenance became so widely extended within the trade?-A. I think that it was used quite extensively as a loss-leader to the detriment of the industry as a whole. That is my personal opinion.

Q. You say your opinion. Have you not something concrete, some facts that might assist the committee, Mr. Swenson?

Mr. Corlett: Yes, I think, Mr. Fleming, we can get this information from our own resources, but, as you will appreciate, we are relying on the governmental services, the Dominion Bureau of Statistics, and they have chosen to lump this industry with the toilet goods industry. Of course, the new census will not be available until next year and we cannot use that, but I think we can get it.

Mr. Fleming: I appreciate the difficulties involved, but I just wondered if you keep any statistics within the trade which might help throw some light on these two important points that you mention.

By Mr. Beaudry:

- Q. Mr. Swenson, throughout Mr. Phelan's examination the word "control" as applied to your association has been used extensively. Would it not be truer to say that your association is like many other associations in its control purposes and that it could be said to be similar to the Canadian Daily Newspaper Association or the Association of Canadian Advertisers or any kind of association which is a gathering of people who are interested in the same type of business but who actually exercise no control whatever over the operation and sales of their various members?—A. That is exactly it.
- Q. Therefore, you do not control anything as an association?—A. That is quite true.
- Q. Your association, I believe, is like many others—grouped in order that better trade practices may obtain in order that joint exhibitions may be given, that joint sales promotions might be offered to the public in order that an annual convention perhaps may be held where both customers and manufacturers and all component parts of the distribution system can meet—am I right?—A. That is right. One of our efforts is a hairdressers show. We usually have one in Montreal and one in Toronto. You could not do that unless you had some organization.
- Q. So therefore your association does not control any part of the manufacturers' or jobbers' operations?—A. Every manufacturer, every jobber, every member is free to run his business just as he sees fit.
- Q. Some point was made of the fact that price maintenance when enforced towards a jobber or a distributor would eventually reflect on the consumer and the consumer price. While you do serve a great many barbers and beauticians, is it not true that a great many barbers and beauticians make up their own preparations or some of their own preparations?—A. They can and do.
- Q. Is it your experience that some do?—A. Some do. I would say it is not the general practice.
 - Q. But it is a practice available normally?—A. It is available at any time.
- Q. And therefore the consumer who in this case is a beautician or a barber always has the recourse of making up his own preparations?—A. That is right.
- Q. I think Mr. Fleming elicited from you that while fixed prices are varied from time to time the margin has kept either in the same proportion or has gone down?—A. That is right.
- Q. You did mention that over a period of some ten or more years—I do not recall—their price increases generally had been held to approximately 15 per cent?—A. Yes.
- Q. And one reason for that was the increased production which had obtained over the years?—A. The increased volume.
 - Q. The increased volume?—A. Yes.
- Q. Would you tell me if this increased volume derived its impetus from price maintenance wholly or partly?—A. Well, I think the increased volume was due entirely to the growth in the industry. I do not think that price maintenance or resale price maintenance had anything to do with the increase in volume.

Q. Well, haven't you, if not stated, more or less allowed us to understand that price maintenance has helped the growth of the industry or has helped your industry to grow? I will pick it up from the beginning of operations of your association where you find things in a chaotic state, as you said.—A. But you see, the volume of business that you can procure will be due to the number of people—operators engaged in the business, the number of hairdressers, the number of barbers. That is what increases the volume and added to that the number of new products that manufacturers can bring out.

Q. As far as the cost living—to revert to that for a moment—is concerned, the preparations, I think you used the word "supplies", which are sold to your consumer barbers or hairdressers only represent I would think, according to your brief, approximately 10 per cent or is only a 10 per cent component of the cost to the eventual consumer, the person being under the hands of the hairdresser and the barber and the other 90 per cent of that cost would be made up

by labour or by revenue from labour?—A. That is right.

Q. And that therefore any variation of your price would still only affect the consumer in the proportion of 10 per cent?—A. That is right. You must understand—take a barber giving a haircut; he will have to buy an electric hair clipper that will last him years and years, so you will imagine if you just take 10 per cent, that is a generous proportion.

Q. I was speaking of supplies.

By Mr. Thatcher:

Q. Mr. Chairman, there is one part of the report I would like to refer to first. That is on the top of page 3 where the witness was talking about markups. I wonder if he would tell the committee first of all whether this 20 per cent and 50 per cent mark-up is based on cost or on selling? Did I understand from your earlier evidence that it would be on cost?—A. On cost, yes.

Q. That is 20 per cent to 50 per cent on cost?—A. Yes.

Q. And I wonder also if the witness could tell me some of the things which are price maintained in his own business perhaps, and some which are not price maintained? He said 90 per cent were the former. Can you name any specific article?—A. That is not price maintained?

Q. Yes.—A. No, I cannot. I think it would probably be in supplies manufactured by those members who are not, or equipment which might be imported

from the United States.

- Q. What I am trying to get at is, would you be in a position to tell the committee roughly what your mark-ups would be, first, on the price maintained goods and, secondly, on the ones that are not price maintained?—A. I can only give it on the price maintained. I could not very well come and give you some figures on one of my competitors, who certainly would not supply me with those figures.
- Q. Could your association not obtain for the committee some of the articles which are non-price maintained and tell us what the mark-up is so that we can compare them with the other articles?—A. I question if the manufacturer would give it to us. Take you, for example; supposing you were a manufacturer and not a member of this association and I, as the president of the association, came to you and said, "Look, you may make so and so, let me have your costs; the Combines Committee would like to have it." I question if he would give it to me.
- Q. In your association is every article that is sold price maintained?—A. No, 90 per cent is. Do you mean the other 10 per cent that is not?
 - Q. Yes.—A. I can probably find that out for you.
- Q. I would very much like to have that information on as many articles as you can find.—A. Fine, we shall do that. I misunderstood you; I thought we were to go to members outside who were not members of the association.

Q. You said a moment ago that there were agreements between the manufacturers and the dealers to maintain prices. Can you tell the committee is that a written agreement usually, or is it a verbal agreement?—A. Verbal in every case I know of.

Q. There is nothing written whatever, so far as your association is concerned?-A. In the thirty years of business that I have had with all kinds of customers I have never had a written agreement on a price to be maintained.

Q. How many different products would these individual companies usually manufacture-many, or do they specialize?-A. Well, on the equipment they On the supplies they might run the whole would pretty well specialize. line of ten different products.

Q. Ten to how many?-A. About ten.

Q. Well, you said a moment ago that if, for instance, someone sold a shampoo under the price which was maintained, you would cut him off. Would you cut him off just for that product or would you cut him off for the whole ten?-A. I would cut him off for the whole line.

Q. In other words—.—A. Now, that is my feeling. As I say, I have never

had to do that with anyone.

Q. Of course, you are speaking for your association so I suppose it would be reasonable to assume that most companies would follow the same practice—A. Yes, I think so.

- Q. Would not that be a little rough sometimes on the individual dealer, to lose the whole line?—A. I do not think it would be rough at all. Imagine one of my customers, one of my fifty customers starting to get rough with me and I have been working with him on that for thirty years. Do you think that is being rough? He, without any thought, proceeds to cut my business in half, wreck it, and I have worked thirty years for it.
- Q. But I can conceive if a dealer was handling, say, ten major products and he was cut out of the whole line for one such practice as you mention, certainly he would have serious financial loss; perhaps it would not put him out of business but it would be serious?—A. It could not be nearly so serious to him as it would be to me—not nearly so serious. I can assure you that he can get by. In no time at all he can go out and get 25 other lines that he can sell just as easily as mine, but my business that I built in thirty years is spoiled in five minutes.
- Q. Supposing one manufacturer found it necessary to apply sanctions to a dealer, would other companies in your association be likely to also apply sanctions?—A. They might. There are many in the association who might or they might not.

By Mr. Thatcher:

- Q. But they might?—A. They might.
- Q. And because of this action on your part his firm could conceivably be put completely out of business, am I right?—A. He will always be cautioned, but if he repeats, it is because he is determined in some way to injure me. I will caution him. Why should he do otherwise? Why should he not follow my suggestion? Here is a fair price and these others want to follow the fair price. Why should he want to wreck my business for some momentary gain of his own? Is that fair? Is that drastic.
- Q. Mr. Swenson, I think perhaps I should ask the questions. You said that this policy of price cutting might lead to a dealer being barred from buying products from any company in your association.—A. I will qualify that. There might be one or two others that might follow my lead, but I can assure you that there would be at least ten others who would not follow my lead. Does that answer your question?

- Q. Well, such a penalty looks pretty severe to me. You stated that your industry has very severe competition. Mr. Swenson, do you have much foreign competition or is it mostly domestic?—A. Mostly domestic.
- Q. Why is it mostly domestic? How is it that you do not have American competition, for instance?—A. Because of the tariff.
- Q. What is the extent of the tariff protection which your industry enjoys?—A. I think 20 to 25 per cent.
- Q. I believe it is $22\frac{1}{2}$ to 25 per cent. In other words, as far as your industry is concerned, would I not be correct in saying that your are enjoying such protection at the expense of the Canadian consumer? I suggest that much of your competition is already restricted by the tariff.—A. That leaves the impression that our prices start at $22 \cdot 5$ or 25 per cent over those in the United States. I differ with that entirely. I think our prices are comparable with those in the United States. If you take the sales tax and the excise tax off, you will find practically everything in the beauty business is competitive with the United States without any tariff.
- Q. I have always been very interested to know how a manufacturer takes the tariff into consideration when he is setting his prices. Could you enlighten me on the subject?—A. Well, in the beauty business as far as supplies are concerned I do not think that the tariff enters into it at all.
- Q. Would you object if it was taken off?—A. In the beauty business, as far as supplies are concerned, no, I do not think I would.
 - Q. You would not object?—A. No.
- Q. Well, then, if you would not object could we assume that your prices in this line are 22.5 to 25 per cent lower than the similar American prices today?—A. No, that is not what you said.
- Q. Perhaps I did not understand you then.—A. I am assuming what you are trying to say is, rather, if the item is \$1.00 in the United States it is \$1.25 here. It is probably less than \$1.25 here.
- Q. How do you take the American tariff into consideration in setting your price—that is what I would like to know.
- Mr. CORLETT: I think maybe I could answer this question. You will find that many of the manufacturing establishments here in Canada are subsidiaries or are affiliated with American firms, so, in effect, I suppose the tariff has this one advantage, that it is forcing these firms to set up manufacturing establishments in Canada.

By Mr. Thatcher:

- Q. Yes, at the same time it is making the Canadian consumer pay quite a bit more for the same article. I would like to ask the witness now if he does not believe in the principle of competition. I assume you do?—A. Absolutely. There must be competition. There would never be any progress in this industry or any other industry without competition.
- Q. And I suppose when you go out to buy your raw materials you like competition in that field. You would prefer to be able to buy in a free market?—A. Yes.
- Q. How can you on the one hand want competition on the things you buy, yet come to this committee and say that you should have resale price maintenance to give you a protected price on what you sell?—A. I like competition. I am a manufacturer. I am just buying raw materials, I am not buying branded products.
- Q. In other words, would it be fair to say that you believe in competition for everyone else except your own industry?—A. I really do not remember that I made that statement.

Q. You say that you like to go into a competitive market to get your raw materials but you do not wish to compete when you are selling .-- A. You are confusing two ideas, raw materials and branded lines.

Q. I am not confusing anything. I simply do not see how your two desires are consistent. I wonder if you would turn to your point 3 on page 2 of your brief for a moment, sir. At the first line you say:

"The desire of beauty supply manufacturers to continue the policy of resale price maintenance with reference to the sale of trademarked and branded merchandise is not in order to increase prices but merely to maintain a condition of orderly merchandising."

Would it be fair to assume from that statement that if resale price maintenance was abolished there would not be orderly marketing in your industry?—A. I think that orderly marketing would continue even if you prohibited resale price maintenance in my industry for the simple reason that I think, as I mentioned before, this is an industry where there are no terrific mark-ups. Here is an industry that is just marginal, it is just barely able to get along, it is just barely able to exist on the profits that competition forces us to take, so whether there is resale price maintenance or not there is not going to be a great deal of change. Those prices are going to stay.

- Q. Then, could the committee assume that you would not object particularly if resale price maintenance is taken off as it is not going to hurt your industry much?—A. When you speak like that you might be interpreting that I mean the whole industry. Let us put it this way. For my own business it would not make very much difference.
- Q. I think you are speaking for your association today. Could you relate your answers—.—A. To the association?
- Q Yes. You said you did not think prices would come down much if resale price maintenance came off .-- A. Let us put it this way. I do not think that it would make much difference. Nevertheless I would not like to see price maintenance prohibited.
- Q. You said a moment ago, in replying to Mr. Phelan, that you put this resale price maintenance on originally because of chaotic conditions in your industry. Can I take it then that some of these chaotic conditions were caused by manufacturers going around cutting prices?—A. I think it would be more due to distributors, who were never correctly able to gauge the costs of selling.
- Q. There was a great deal of price cutting?—A. Sure, that would be price cutting.
- Q. It was price cutting that brought about the chaotic conditions. Could I not assume then that if resale price maintenance was taken off there would be price cutting again?—A. Yes, that is what I said could happen, and I said I would not like to see that removed.
- Q. In other words, as far as people who buy this equipment are concerned, if resale price maintenance was taken off we might expect price decreases in this industry. That is what you said, is it not?—A. Yes, but then you must assume that there can be price decreases that are detrimental to the industry as a whole. If you have some price cutting by jobbers who do not understand and thoroughly know their costs, is it not fair to assume that the industry has to bear that cost? In other words, the distributor now being bankrupt, who bears that cost? It is the manufacturer who sold him.
- Q. I think your argument is a good one, but nevertheless as far as this committee is concerned, you would admit that if price resale maintenance is abolished, your prices probably would come down?-A. Yes, but I do not want to give answers which would create false impressions. The impression you want me to give is that prices would come down and that the community would benefit. I refuse to make such a statement.

Q. Would the consumer benefit?—A. The consumer would never benefit in an industry because the loss has to be taken up. When prices are lowered in an industry, somebody has to take care of it, and whoever is in that industry will be the one to bear the loss.

The Chairman: Now, Mr. Garson.

By Hon. Mr. Garson:

Q. Mr. Swenson you told us that when the association met it never discussed prices, but that it sometimes discussed deals.—A. Yes.

Q. And I understand that the discussions would centre around such things as whether the dealers were to be permitted certain benefits beyond a certain date. What sort of benefits would you have in mind?—A. For example, you may have a deal whereby you buy ten units and you get a dozen.

Q. Yes.—A. That is a special sale; you buy 10 and you get 12; and the manufacturer has that deal on, and he says that it closes on December 1.

Q. And you would discuss together as manufacturers whether you would permit the dealer to have that discount after a certain date?—A. Well, we would discuss just what policy we should follow. The dealer buys those goods and he has them in his stock. Should he continue selling them on that deal price, or should he be allowed to take them into his stock. Those would be things about which it would be nice to have uniformity.

Q. Oh yes, and that would be discussed?—A. Yes.

Q. And the terms which the dealer would get would be established by the manufacturers and decided upon in this meeting?—A. That is right.

Q. And you would make that decision without reference to anybody

else?—A. Yes, that is right.

- Q. In the fixing of your own prices, would it be very clear that each manufacturer fixed them individually?—A. Yes.
- Q. Do I gather that so far as the prices of your goods are concerned, you decide what they shall be, not only what your profits shall be but what the dealers' profits shall be on your goods?—A. That is right, because I have a fixed discount.
- Q. You have a fixed discount and you decide that yourself without reference to anyone else?—A. That is right.

Q. And under this arrangement.

Mr. Fleming: Did you say "profit", or "price"?

Hon. Mr. GARSON: The mark-up for himself and the dealer.

By Mr. Garson:

Q. You have told us about the shampoo which you sold for \$2. With respect to that shampoo your manufacturing cost was \$1.—A. That is right.

Q. And that shampoo sold for \$3?—A. That is right.

Q. And I gather that you had a mark-up on your cost of 50 per cent. Is that right?—A. Yes, that is right.

Q. Because part of that mark-up is represented by taxes?—A. Yes.

- Q. And the dealer, I suggest, would have a gross mark-up on his cost of \$2: he would have a gross mark-up of another \$1, or 50 per cent?—A. That is right.
- Q. You told us that these profit mark-ups during the past 10 years had been steadily coming down?—A. No. I said that the prices had been maintained for the last 10 years and that the only increase in prices had been those which were reflected by increases in taxes.
- Q. Mark-ups which reflected prices; what I am talking about is the gross profit mark-up. I distinctly understood you to say that during that period of time the profit margin had been steadily coming down under resale price maintenance and I gathered that your argument was that resale price main-

tenance was a beneficial arrangement because under it profit mark-ups were coming down. Now, were they coming down or were they not?-A. Yes, they were coming down because our volume was going up, and our unit profits could be less.

Q. About what percentage per annum on the whole would they come down during that period?-A. That is quite a question to throw at me without

a book, you know.

Q. Well, would it be 10 per cent per annum?—A. No, I think it would be very small. 10 per cent is quite good.

Q. Well, let us say 5 per cent?—A. It might be.

Q. In the 10 years, with 5 per cent, that would be 50 per cent, over those 10 years. Is that right?

A. With your arithmetic; when you ask me a question like that, unless I have some books and figures, it is difficult to answer. Had you written and asked me beforehand, I could have produced them.

Q. I do not want to put any figures in your mouth. I asked you about 5

per cent. Would it be 5 per cent?—A. Let us say a small percentage.

Q. You say a small percentage. Well, of course, would it be 3 per cent?— A. It might be.

Q. That would be 30 per cent over the 10 years?—A. It might be.

Q. So your mark-up over 10 years would be 30 per cent higher than the present 50 per cent?—A. According to those figures, that is right.

Q. And for your manufacturing mark-up as well as for the dealers' mark-

up?—A. That is right.

- Q. I also understood you to say that if this legislation were enacted, prices would remain practically identical, and that prices would not change. Is that because you have got prices down so low that it is not possible for your competitors, even if resale price maintenance were removed, to cut prices any further?—A. It would be difficult to find a more competitive business where prices have been brought down to such a level as that of the beauty manufacturing business.
- Q. You say that in your interests it is necessary for the wholesalers to have a 50 per cent mark-up?-A. That is right.

Q. And you say that the dealer should have a 50 per cent mark-up too?—A.

That is right.

Q. I understood you to say that one of the justifications for resale price maintenance was that the dealers could buy your branded line, which they would not be able to do otherwise because then you could not remain in business.—A. Yes. I think I would have been out of business many years ago if I had not had resale price maintenance.

Q. When did you go into business?—A. 30 years ago.

Q. And when did resale price maintenance come into effect?—A. On the first day I went into business.

Q. And your organization came into effect when?—A. About 10 years ago.

Q. About 10 years ago?—A. So I had 20 years start, and all that time I was never concerned with anything else. All that time when I thought of it I shuddered, because I wanted to stay in business.

Q. I understood you to speak of chaotic conditions which obtained within your organization or set-up?—A. That is right.

Q. You were then practising resale price maintenance yourself?—A. Yes.

- Q. Then were the chaotic conditions caused by, or, to put it in a more obvious way, were they not caused in fact by the absence of other dealers and other manufacturers engaging in resale price maintenance?—A. That was part of it.
- Q. So you managed to survive for a period of 20 years through this chaos, when most of the other people in the business were not practising resale price maintenance which you were practising?—A. That is right.

Q. I suggest to you then that their practising of resale price maintenance would be merely a factor in your business, perhaps, would it not, because all were competitive and you would have to meet those practices?—A. It would help me to have the association include those in the same business, because it would establish a basis on which the jobbers could sell them. The association would then become a profitable one and in that way I could collect my money.

Q. In other words, it was a great advantage to you. It was really more important to you that other people in the business should be practising resale price maintenance than, let us say, that you yourself should be practising it, because if you were practising it, and they were competitive, you would lose

business.—A. Yes.

Q. Nevertheless, you managed to survive through following that practice of resale price maintenance for a period of 20 years?—A. That is right.

Hon. Mr. Garson: That is all. The Chairman: Mr. Jutras.

By Mr. Jutras:

Q. Mr. Chairman, following that, did I understand correctly that your main argument is that this practice makes for stability at both your level and the dealer level?—A. Right.

Q. You mentioned a while ago that without this practice you would not be in business. Then, on page 3 you mention that the policy helps to keep small dealers in business. Has your association made a close analysis of that angle to substantiate that statement—that it does keep the small dealer in business, or helps to keep the small dealer in business?—A. No, but it should be obvious that, if some large organization decided to take my item and make it a loss leader, it is bound to affect the business of everyone in the community—and the one that is going to be hurt worst is the small man.

Q. Of course, there can be two sides to that argument. It is the contention of your brief, but I say there does not seem to be much substantiation for that statement—which I would consider to be a very important part of the brief. What is your substantiation for that? Is it just a feeling?—A. It is principally

a feeling, but it is principally just plain arithmetic too.

Q. The point that is not quite clear in my mind is this. You mentioned a moment ago that your association came into being in 1941. Up until that time the price maintenance practice was practiced by something in the neighbourhood of 50 per cent of the members of your trade. It was only after 1941 really that the practice became more or less general and it has worked up to 90 per cent in 1951. Would it not be a fair statement to say that it became an important factor in your business shortly after the war, or towards the end of the war?—A. In general I think it has been a factor all the way through.

Q. Well, possibly it has been a factor but I mean a major factor. I would take it that more than 50 per cent of your business people were operating under this system towards the end of the war? And from then on, let us say after the end of the war, it became a major factor?—A. Let us put it that experience has gradually, over the last ten years, shown different manufacturers that everything is better for them and for the industry if they have a list price on

their goods—which is virtually price maintenance.

Q. Yes, but take the situation in your association, in your line, in Canada. Since this practice has only been really prevalent after the end of the war or towards the end of the war, what percentage of greater stability is due to the practice of price maintenance and what percentage due to the sellers' market in which you have been operating? Since the end of the war there has been the general economic condition of a sellers' market. No doubt the condition of a sellers' market, which has existed since that time, has been a pretty substantial factor in the greater stability of the small distributors and manufacturers as well?

What I am trying to do is to draw the line between the influence of great benefit due to price maintenance—.—A. I think it has been a very important factor. Does that answer the question, or do you want me to go further.

Q. Well, I do not see, to be quite frank with you, how you can make the statement that it was a very important factor—since the practice has only been prevalent since you have been operating in a sellers' market. It has never been given a chance in a buyers' market, in other words.

I think the effectiveness of the practice toward greater stability would come in a buyers' market and not in a sellers' market. Would you not agree?

—A. I just do not know. I cannot follow your thoughts clearly enough to make

an answer.

Q. Well, here is the point I am trying to make. You say your experience with price maintenance, and I am talking about your association and the business of your group as a whole—.—A. That is right.

Q.—your experience with the practice of price maintenance is that it makes for greater stability in the small dealer business let us say?—A. That is

right.

- Q. My point is: what is that statement based on—since your business has never had the practice of price maintenance in a buyers' market, but only in a sellers' market? Without the practice of resale price maintenance stability would have been greater anyway in the case of small dealers, as well as others?—A. I do not think the buyers' or sellers' market has a great deal to do with the situation where a small dealer buys my product. He knows there is a fixed price for it and he knows there is value. He knows that tomorrow nobody will come along and cut that right out from under his feet and put him flat on his back. Do you understand? He might buy \$5,000 of my products and have them on his shelves. He knows that he can sell them at the price I have set, but if it was not under a price maintenance system he would not know whether he could sell them tomorrow for \$1,000—and there he is out of business. Is that not worth something to a small dealer?
- Q. It is not quite the point I was raising but it still comes back to the point of the business of stability. You assume that without the price maintenance system, taking your own case, you would be out of business, and that the dealer would have various types of shampoos that he would not know anything about?—A. That is right.

Q. From past experience we know that even if there was no resale price maintenance there would still be some known standard brands that we could buy. Brands would not change overnight in all of the various lines. I think you are putting it in the extreme.

However, to come back to the present case, is it an accurate statement and a statement that can be proved, to say that the practice of resale price maintenance contributes substantially to the help of the small business dealer?

—A. Yes, I think that can be proved.

Q. You have not attempted to do that?—A. No, not as an association.

Q. You would not care to tell us the percentage that is due to general economic conditions and the percentage due to resale price maintenance?—A. No.

Q. That is all.

The Chairman: May I just offer a suggestion. We have a number of members of the committee who are very anxious to question the witness, so may I be permitted to ask you to make your questions as short as possible in order to give everybody a chance. I think the next on the list is Mr. Shaw.

Mr. MacInnis: On a point of order there, Mr. Chairman. I am not one who is going to ask any lengthy questions but I think that a suggestion such as that should be made at the beginning of a meeting. I was going to make

it myself when we began here but I let it go. I think you had better leave it over until tomorrow. I am not speaking for myself—I may ask questions but I will be brief.

The CHAIRMAN: I thought we might accomplish something today and tomorrow we might start from the beginning. I did not think that a member would take so long to ask questions, and I did not like to interrupt as that is not very pleasant for the chairman.

Mr. MacInnis: If I know the members they will not pay any attention to you.

The CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Mr. Swenson, you indicated to the committee that for twenty years prior to 1941 you were in business as a manufacturer. Is that correct?—A. Yes, correct.

Q. You practiced resale price maintenance during that full twenty years, did you?—A. Correct.

Q. Did your competitors practice that policy during the same period?—

A. A good many of them did.

- Q. A good many. Would you say a majority of them did?—A. Well, that is an answer which has to be qualified, because in the first 20 years I was located in Winnipeg manufacturing electrical hairclippers, dryers, vibrators and so on. That was just one phase of my business. It was entirely equipment. That was the first 20 years. Then I came down here and expanded my business to include other lines. So, when you ask that question about the first 20 years, it is not the same answer that you would get on what I was doing in the next 10 years.
- Q. I infer from what you say that for the 20 years prior to 1941 you did practice resale price maintenance?—A. That is right.
- Q. And is it to your own knowledge that many of the other manufacturers and distributors in that field practiced the same policy?—A. That is right.
- Q. In 1941 your organization came into being. Were you one of the principle organizers?—A. No.
 - Q. Were you one of the first members?—A. No.
 - Q. Did you attend the first meeting that was held?—A. No.
- Q. When did you become a member of this organization?—A. Oh, I would say about two years later.
 - Q. Were you approached by the organization to become a member?—A. Yes.
- Q. What was the principal inducement held out to you?—A. Well, they held out to me the prime reasons for the organization.
- Q. What were they?—A. To promote closer cooperation between jobber and manufacturer in their efforts to serve the hairdressers and to do all such things as are incidental or conducive to the attainment of the above objects.
- Q. Was resale price maintenance mentioned to you when you were approached to become a member of the association?—A. No.
- Q. Did it come to your attention after becoming a member of the association that the association as such was concerned with resale price maintenance?—A. As a matter of fact, I do not think it was even thought of very much until just recently.
- Q. It has now, though, become one of the principal planks, let us say, of your association?—A. No, I would not say that; no, not as an association.
- Q. Mr. Swenson, you indicated that there are now certain manufacturers and jobbers who do not belong to your association. You are a member of the executive of the association, I understand?—A. That is right.

Q. Did you or any member of your executive, of the executive of your association, as such, approach these non-members to become members?—A. Yes, they have been approached.

Q. Have you discussed resale price maintenance with them?—A. No, we

never discuss prices in our organization.

Q. In your brief, Mr. Swenson, you have laid great stress on the value of

branded goods.—A. Yes.

Q. You have admitted that you manufacture many kinds of goods. Are they sold under the same brand name?-A. No, they have different names; I

have my name on all the labels.

Q. What I mean is this, it would be by the name that they would be mostly recognizable; is that correct?—A. It would have to be a combination; as an example, if you have a name like Starlet Cold Wave, the name of the company Rilling-Wahl, would be down at the bottom of the label, because Rilling-Wahl is the name of the manufacturer. Then, we have another cold wave called First Lady Cold Wave, and that too bears the name Rilling-Wahl-it is the Rilling-Wahl that determines it. But you can have many other names. Does that answer your question?

Q. Partially. You confuse me a bit.—A. Or, do I get your point?

Q. Yes, you do sell shampoos of different grades with different labels on them?—A. Yes.

Q. And you sell them in individual containers?—A. Yes.

Q. And the container makes it readily recognizable as a product which

- Q. Is there anything on the container to show that?—A. Yes, you have to look for it; the manufacturer's name is Rilling-Whal, you see. Now, do you mean, could you distinguish it readily at a distance of 3 feet and tell from the label whether it was a product of mine or not?
- Q. Well, a purchaser would come into the jobber's show room and vice versa, and let us assume the jobber is selling shampoo; can the purchaser readily determine your products—your \$3.00 product and your \$5.95 product as being a product of your factory?—A. Within certain limits. There may be a line-up of twenty shampoos. You see, you have to look at the bottom of each label to find out the name of the manufacturer.

Q. You do not fear, Mr. Swenson, that by selling a \$3 product like that to a \$5.95 jobber in each case that you are probably causing your own brand

name to deteriorate in value. -A. No, I do not think so.

- Q. And yet you do feel that a 10-cent reduction in the price of one of your products would cause a depreciation, let us say, in the value of the brand name?—A. If it was a name brand that the price had been established with. Let us take the Starlet cold wave which is \$9.50 a dozen, and the First Lady cold wave is \$13.50. Either one of those cut 10 cents would injure me.
 - Q. You are thoroughly convinced of that?—A. Yes, thoroughly convinced.

Q. Do barbers ever serve as retailers of your products?—A. No.

- Q. You understand practically every barber is a retailer in the sense that he sells certain preparations—hair tonics, face lotions, et cetera?—A. Well, you might say this, we as manufacturers wish they were retailers but the volume that they do is so small that you might just as well say they are not retailers.
- Q. But are you aware of the fact that they do retail in practically every case?—A. I am aware that they have items for sale and occasionally make a sale but not the way you describe it—they are not retailers.
- Q. What control do you as a manufacturer have upon the price which that barber places upon that commodity?—A. Well, if he sells one of my supplies like some of my shampoo I would insist that he sold it at the price that I put on it.

- Q. And what would you do if he did not? If it came to your attention that that barber did not sell it at the price which you had specified what would you do?—A. Well, I would first find out who sold it to him.
- Q. The jobber, in other words?—A. Yes, and I would point out to the jobber his error.
- Q. Now, what do you mean, Mr. Swenson, by "his error"?—A. Well, perhaps that was an unfortunate word—his mistake, his omission.
- Q. Well, the dictionary will indicate that mistake and error are the same. What do you mean by his omission?—A. His failure to conform to the price I had set.
- Q. And then, Mr. Swenson, what action would you take against him?—A. I do not imagine that I would ever take any action against him.
- Q. But you have already indicated that you would caution him?—A. I would caution the dealer.
- Q. Now, what form would that caution take?—A. I would caution the dealer and say: "Look, Joe is selling this shampoo at such and such and he should be doing it at such and such" and no doubt the barber would just say: "Well, that is too bad; I am sorry for that".
- Q. You are dealing with the jobber, Mr. Swenson?—A. You see, I have no direct connection with the barber.
- Q. But you have indicated that you have cautioned him which indicates that you do have a direct connection?—A. I would caution the jobber.
- Q. But remember the barber is dependent upon what the jobber does and apparently the jobber is dependent upon what you insist that he do. Now, you caution him and he tells you to jump in the lake—that is a very broad term—you appreciate what I mean; what do you do next?—A. It has never come up but I would imagine that we would not sell him any more.
 - Q. You would not sell him any more of that product?—A. No.
- Q. In other words, you could put him out of business?—A. No, my dear sir, that is the furthest thing from my thought. He can go and buy 25 other products and sell them at any price he wants to.
- Q. But so far as your product is concerned you would in effect be putting him out of business; in other words, if he were relying on your products he would be out of business?—A. If that was all he was doing all day long selling my shampoo.
 - Q. Yes.—A. That is a pretty broad statement.
- Q. Well, Mr. Swenson, there is a vital principle involved?—A. But the vital principle reflects back on me. What is he doing to my business? I have worked on my business for 30 years and it has been on a basis of price maintenance. Why should he in five minutes decide that that is all wrong and wreck my business?
- Q. That is not what I was trying to get at. What I am trying to get at is what you will do ultimately to the consumer through that policy—that resale price maintenance. Am I right in inferring then that under certain circumstances namely, withdrawing your product from the jobber you will no doubt withdraw it from the consumer?—A. I would not withdraw it from the jobber; I would tell the jobber not to sell Joe any more.
 - Q. That is exactly what I mean.

By Mr. MacInnis:

- Q. Mr. Swenson, looking at this matter specifically from the point of view of the consumer I understand in answer to a question that you are in favour of competition?—A. Yes, I am.
- Q. What is the purpose of resale price maintenance—doesn't it limit competition?—A. No, I do not think that it limits competition.

Q. You do not think it limits competition?—A. No, I do not see how it limits competition. I think we were discussing that some place in the brief.

Q. I am not taking the brief for the moment.—A. I know, but those answers

would be the answers I would give to you.

Q. No, that would be applied to all your answers this afternoon, but I want to know what is the purpose of resale price maintenance if it is not to limit competition?—A. Well, there are several pages in here that would answer that.

Q. Can't you answer that? You know what is in those pages?—A. Yes.

Q. Can you answer the question very quickly by summarizing it?—A. Well, when you say "does it limit competition"—well, price maintained goods are still subject to competition from similar products. You see, I set a price of \$2 for a gallon of shampoo and supposing I set a price of \$3 a gallon for that shampoo, why, by tomorrow morning there would be five guys out there selling that for \$1.95. They do not bother you if you just sell it for \$2.

Q. That is not an answer to the question.—A. Well, that is competition and that is competition whether it is price maintained or not. I maintain a price of \$2, but if I tried to maintain a price of \$3 I am out of business tomorrow.

Q. Would not there be more competition if you did not have resale price maintenance?—A. I do not see how there should be more competition in the beauty business, and that is the business I am in.

Q. Well, resale price maintenance cannot mean anything to you unless it limits competition in your business?—A. No, it gives me stability; it gives me a feeling of stability. It gives my jobbers a feeling of stability; it gives everyone

a feeling of stability.

Q. Why?—A. Because they know that tomorrow that same shampoo is going to cost them \$2. They can go out and put a stock in. They know it is going to be maintained but what would they do if they thought that maybe tomorrow it would be \$1.50; they would order some piddling order and I would have to make two deliveries, two invoices, two everything, but when they know that it is going to be \$2 they are willing to put in a stock and keep that stock and maintain it.

Q. That answer is not satisfactory at all. I have understood from everything that I read, even from your quotation from Justice Brandeis that he refers to unfair competition, and all the arguments you have made in this brief about upholding price maintenance are based on unfair competition, that the purpose

of it is to overcome unfair competition, is that not correct?

Mr. CÓRLETT: Perhaps I might answer Mr. MacInnis. I refrained from saying anything because the committee is naturally more interested in hearing from Mr. Swenson, who knows the industry, but my understanding of the Brandeis idea set forth in that article is that if you had a freeing from this resale price maintenance policy many of these jobbers or dealers would be forced to the side. They would be put out of business. These dealer organizations are not all of equal strength. Some are big, some are chain organizations, some are just individual organizations, as I understand it, operating in a certain area, and it was my feeling, from reading the Brandeis article, that if you started slashing prices, which we are certainly of the opinion would happen in this industry, with the less efficient dealers many would just go out of business; that is what happened in the thirties. Now, we cannot produce—I suppose we could if we checked the records, but I do not see how we can go back before 1940, when the mortality rate was very high in this industry. In fact, the mortality rate in this industry is high to-day. I was looking at the Canada Gazette a few weeks ago and I saw that one firm in Hamilton went bankrupt. It may be that resale price maintenance fosters inefficiency, I do not know, but certainly it would cut down the numbers in the industry at the dealer level, and I think that is where the vulnerability exists in this industry today, at the dealer level, more than at the manufacturing level.

Mr. MacInnis: You maintain that resale price maintenance limits competition at the dealer level?

Mr. Córlett: Limits it? Mr. MacInnis: Modify it?

Mr. CÓRLETT: No. To the extent that there would be more dealers, to that extent there would be more competition at the beauty shop and barber shop level.

Mr. THATCHER: But you admit, though, that resale price maintenance does limit competition between various dealers of the same products?

Mr. CORLETT: In so far as one manufacturer's product is concerned.

Mr. THATCHER: So that that practice does restrict competition in that way?

Mr. CORLETT: To a great extent, but I do not imagine that there is one shampoo in the world that cannot be substituted for another, with all due respect to my principals. I do not think you can say that, because one dealer and, in due course, the beauty operator are restricted as to price, that if they do not fall in line, or even if they are no longer supplied with that manufacturer's products, they cannot turn around and in 24 hours get another shampoo in the same price range from five or ten other manufacturers.

Hon. Mr. Garson: Which is already price maintained.

By Mr. MacInnis:

Q. Mr. Swenson, you said in answer to another question that you were not sure whether people in the same line that you are in would refuse to supply a dealer who cut prices. Is that correct?—A. I made a statement that there might be others who would follow. You are going back to the statement that I made that I might cut off a dealer if he did not conform, and where I said there might be others who would follow my action but there would be many, many more who would ignore it.

Q. That is merely an opinion. You have said, though, you would cut him off .- A. Both are opinions. If I am entitled to one opinion, I am entitled to the other.

Q. You would cut a dealer off who sold your product at less than the agreed prices, you said. Well, then, other manufacturers might follow and refuse to supply this dealer also. Would not that be reducing competition?—A. It would be if there were not so many involved, but there are so many involved—if there were just three and two refused and that just left him with one, then that is a bad situation, but he still has 10 or 20 sources of supply. Surely that cannot be any harm to him.

Q. Let me quote from page 4 of your brief. The article I am quoting from was taken from Harper's Weekly of November 15, 1913, written by Louis O.

Brandeis. The article reads:

> When a trade-marked article is advertised to be sold at less than the standard price, it is generally done to attract business to the particular store by the offer of an obviously extraordinary bargain. It is a baitcalled by the dealers a "leader" but the cut-price article would more appropriately be termed a "mis-leader", because ordinarily the very purpose of the cut-price is to create a false impression. . . . The evil results of price-cutting are far reaching.

Now, the purpose of resale price maintenance is to prevent price cutting, is that not so?—A. That is right.

Q. Well, then, to that extent the purpose is to eliminate competition. Mr. Beaudry, I think it was, said, and you agreed with him, that a customer, a barber or a beautician, could make up his own preparations.—A. He could, yes.

96207-3

Q. Where would he get the raw materials for making his own preparations? Would he not have to buy them from you?—A. No, he would go to the same sources of supply as I do.

Q. But he would have to buy them from some manufacturer.—A. You mean

some manufacturer in our organization?

Q. In your line of business.—A. No, he could go right outside of our organization. That is all.

By Mr. Harkness:

Q. Mr. Harkness, from the point of view of a man who buys a haircut or a woman who buys a hairdo—you said that only about 10 per cent of the hairdressers' gross income enters into the cost of beauty supplies. That being so, would you agree that a rise or fall in the price of supplies bought by these operators would not be likely to affect the price of a haircut?—A. Practically none.

Q. In other words, as far as your industry is concerned, whether resale price maintenance causes an increase or decrease in prices has no practical

effect on the ultimate consumer.—A. That is right.

Q. The point I am making, Mr. Chairman, is that as far as this industry is concerned it seems to me to make no difference to the ultimate consumer

whether they have resale price maintenance or whether they do not.

Next, on page 2, paragraph 3, you talk about the chaotic conditions which had prevailed in the industry. Then you say this: "The beauty supply industry adopted a resale price maintenance policy in an endeavour to eliminate these chaotic conditions". I am not clear yet as to when this resale price policy was adopted. I take it it became general in 1941. Am I correct in that?—A. It was one of those things that was just a gradual growth. It was not that the organization got together and said: "Look, we as members insist", or we will take a member in and say, "Now, one of the reasons that we allow you in is that you have a price maintenance". That was never done. It was a case of gradual education to show the manufacturers, to show distributors, to show everyone in the industry how much better everything was for maintaining prices.

Q. My next question was, what was the method by which this was done?

-A. Educational.

Q. Who carried on this education?—A. We just carried it on at general meetings, probably stimulated by the executive.

Q. In other words, the association, you say, adopted the policy and then

they spread the faith among the members.—A. That is correct.

Q. Well, is that not to some extent a combination amongst the manufacturers and dealers, in order to maintain resale price maintenance?—A. I hope not.

Q. Well, in your evidence, more or less connected with this point, you

stated at one stage that:

"Too many jobbers were operating who did not know how to operate and were throwing the whole industry into chaotic conditions."

Apparently your organization was formed to some extent to prevent these people who did not know how to operate and were causing chaotic conditions to cease operating. Is that correct?—A. Not to cease operating, but to teach them how to operate.

Q. So the effect of the formation of the association was to teach them how to operate; but was not that effect to cause them to cease operating?—A. That

is hard to know.

Mr. CORLETT: Mr. Chairman, might I throw some light on that subject? The CHAIRMAN: Surely.

Mr. HARKNESS: That is just what I am looking for, light.

Mr. Corlett: I understand that you have been receiving representations from diverse groups. But it must never be forgotten that with this industry, at the dealer level particularly, there are some firms which are merely proprietorships; they are not incorporated companies; and the experience of the association has been—and this applies to firms in industries not related to this one-that these people, through the lack of keeping adequate books of account, just did not know whether they were making money or not. That was particularly true with respect to proprietorships up to 1941. But now the income tax laws make it otherwise because there is a section in the Income Tax Act which requires an operator to keep and maintain books of account which are satisfactory to the income tax authorities. And it might be the case that, if there are no required books of account required to be kept, as is the case with joint stock companies, which is the basis on which some of these dealers operated—they would be just small operators—they would not maintain a set of books and would not know whether or not they were making money. So when they started selling at certain prices, they might be putting themselves that much nearer bankruptcy. That was the real problem with them and it might be that it still exists.

By Mr. Harkness:

Q. Have you any figures as to the number of dealers who went out of business following the formation of the association.—A. That is part of the information which Mr. Corlett has been asked to get.

Mr. Corlett: We would have to get the membership over the years since 1940. I know of another matter concerning five dealers who have gone out of business within the last 20 months. So there is quite a turn-over at the dealer level in this industry. We would be glad to do what we can in getting the information for you.

By Mr. Harkness:

- Q. We are not dealing with retail price maintenance here but with wholesale price maintenance.—A. I think that 90 per cent of it would be that way.
- Q. In that item to which resale price maintenance would apply, would be included those small articles which are sold by the dealer to these suppliers?—A. That is right.
- Q. So wholesale price maintenance is the policy you have adopted rather than retail price maintenance?—A. That is right.
- Q. I was not clear in your answer to Mr. Thatcher as to the basis of these mark-ups which you have dealt with at the top of page 3 of your brief, ranging from 20 per cent to 50 per cent, as far as manufacturers are concerned, and from 33½ per cent to 40 per cent with respect to dealers. He asked you whether that mark-up was on the factory cost price or whether it was on your selling price at the time?—A. On the factory cost price in the first instance; and in the second instance, on the dealers' cost price.

By Mr. Carter:

- Q. Mr. Swenson, how many meetings does your association have during a year? How often do you meet?—A. About once a month—about ten times a year.
- Q. Is that the whole association or just the executive?—A. The whole association. The executive has a meeting on the same day.
 - Q. The same day?—A. Yes.
 - Q. At those meetings you discuss policy, do you?—A. Yes, policy.

Q. And do you discuss among yourselves what treatment is to be given to those jobbers or dealers who cut prices?—A. No, we do not discuss that. That is left entirely to the discretion of each individual manufacturer.

Q. That is not mentioned as a topic for discussion?—A. No.

Q. Is there any agreement among your members to boycott any dealer

who cuts prices?—A. No, no agreement.

- Q. Talking about prices, when you make up your cost prices do you include or do you treat government taxes as cost?—A. Yes, of course I do. In that illustration I gave where I sell a shampoo that costs \$1 for \$2, I have got 52 cents taxes in there.
- Q. Are there any other items of that nature which you regard as cost, as a manufacturer?—A. As a manufacturer I put in all my material and all my labour, and then out of my profit must come all my overhead, my manufacturing expenses, my selling expenses, and my office expenses—out of that 48 cents. Is that an answer to your question?

Q. How many employees do you have?—A. In my business?

Q. Yes.—A. It runs between 25 and 30.

Q. Your firm pays unemployment insurance?—A. That is right.

- Q. You regard that as cost too?—A. Yes, that is part of my labour cost.
- Q. That is cost of labour?—A. Yes.
- Q. I am not quite clear about what you said of the difference between a manufacturer who has his own outlet and a manufacturer who has somebody else as an outlet—who has a jobber as an outlet? If I understood you correctly there was no advantage for a man who has his own outlet, as compared with the person who has not? Is that right?—A. That is substantially right.
- Q. When you sell your product to the jobber you have a mark-up and you make a profit on the sale to the jobber?—A. That is right.
- Q. When the jobber sells it to the dealer he gets another mark-up. Would not the manufacturer who had his own outlet make two profits—the manufacturer's profit and the jobber's profit?—A. Offhand you would think so, but when it comes down to actual practice that manufacturer, who is presumably selling to the beauty shop cannot do it directly. He must establish a jobbing set-up of his own within his own organization. That costs just as much, and perhaps more than if you have a jobber who knows his own business. This manufacturer is faced with distribution costs. He has got to have salesmen, a sales manager, a place for carrying out that operation, and even if he does it within his own organization nevertheless he has to provide those same mark-ups to take care of the added cost. There is no way that a beauty shop can come right into the shipping room and take out stock. You have to go out and sell it.
 - Q. But surely a jobber would make a profit?—A. That is correct.
- Q. And would not a manufacturer make that profit as an additional profit? A. He might or might not.
- Q. It is possible for him to do it?—A. It is possible for him to do it providing he is paying out less wages than the jobber would take out of his business. You see, there is no way of eliminating that jobber; you must have that intermediate step and you must establish somebody in charge and you still have your same accounting, your same salesmen or same persons to provide it. All of it has to be handled the same way.
- Q. When you allow a jobber a mark-up isn't that mark-up sufficient to cover those overhead expenses which you have mentioned, and give him a margin of profit out of that?—A. That is right, but the manufacturer cannot eliminate that because he is selling direct, because he has to have that same organization within his organization.
- Q. I cannot see how an outside jobber could handle goods at a profit and a manufacturer who is handling it himself as a jobber cannot make the same

profit.—A. Well, you see, supposing his profit is practically his wages, and that is the situation many times—just his wages. If you have to go out and hire somebody within your organization for that, where is your profit gone? It would be all right if you could bring somebody in free. If you can bring that jobber into this organization and say, "You work for free," then he would save there, but the minute he has to go out and pay wages for the same service that the jobber is giving him the jobber would work harder than the man the manufacturer hired.

Q. Does the jobber perform this service more economically than the manufacturer can?—A. In many cases, but I guess he will work harder for himself. He will work harder for himself than any one the manufacturer went and hired—obviously—of course he would.

Q. Do jobbers only usually have one line or do they have lines of other manufacturers as well?—A. They usually have several lines.

Q. You said, I think in answer to Mr. Fleming, that the retail part of your business is insignificant?—A. That is correct.

Q. And at the bottom of page 2 you mention the loss-leader as one of the factors that would come into play and upset your business if this resale price maintenance went through?—A. That is right.

Q. How can the loss-leader affect your business when the retail business is so small?—A. We were thinking of the loss-leader at the distributors' level, not at the consumers' level.

By Hon. Mr. Garson:

- Q. You want to attract them into your manufacturing establishment, is that it?—A. I am calling him the jobber. He will sell my product at a set price of \$10 to the hairdresser. Now, that hairdresser in turn—say he wants to know—
- Q. The theory of a loss-leader as I have always understood it is that you attract a number of people into your store by undercutting one line in order that you may sell other lines. Does the same thing apply between the jobber and the barber?—A. Yes, it would.
- Q. You think it would attract all the barbers into the store?—A. Except that the barbers do not go to the store but the dealers' salesmen are selling it and they are the ones that are interested in that.
- Q. But the basis is to get him into the store so that he can see other things, whereas the salesman only has a list of a lot of products, and I would not think the mere fact that the price of one or two or more were cut would mean that he would be more inclined to take the other ones that were not cut.

Mr. Beaudry: You may want to attract a jobber to your industry to the exclusion of other industries.

The WITNESS: Mr. Garson, I can assure you it works the same way as in retail trade.

The CHAIRMAN: Are you finished, Mr. Carter?

Mr. Carter: I have one more thing I was going to ask Mr. Swenson—if he could tell us exactly how he, as a manufacturer, would be affected if this legislation was put through.

Br. Mr. Sinclair (Joint Chairman):

Q. Mr. Swenson, I am the Assistant Minister of Finance, so I am interested in your 52 per cent tax on \$1. I think in fairness that 52 cents is on your cost plus mark-up with 10 per cent and 25 per cent excise tax on the \$1.48, giving you 52 cents, not 52 cents on \$1.—A. Did I say that? I said that the selling price of \$2 included 52 cents tax. Am I correct in that?

- Q. You are correct in that it is based on your selling price.—A. My selling price of \$2?
- Q. On your selling price of \$1.48 you have a 10 per cent sales tax and 25 per cent excise tax, which brings it up to \$2, which is 52 cents tax.

The CHAIRMAN: Mr. Stewart has a question.

By Mr. Stuart:

- Q. I notice that when you said you sold a shampoo for \$3 you gave us a breakdown and that your cost was \$1. Now, the shampoo that sells for \$5, would you give us the idea of that cost?—A. It would be approximately in that proportion.
- Q. Now, you mentioned in one of the statements that you made that your profit would be about 15 per cent, did you not?—A. Fifteen per cent?
- Q. Fifteen per cent—was that figure mentioned?—A. The only time 15 per cent was mentioned was that that represents approximately the price increase that has taken place in this industry in the last ten years.
- Q. There is just one other question I will ask. I understand that you said that you in no way would be opposed to the tariff restrictions on like articles coming from the United States. Would you include in that the hair clippers that you say that you manufacture, and barber chair equipment?—A. No, I should stick to the supplies.
 - Q. I thought so.—A. I would stick to the supplies.

The CHAIRMAN: Well, gentlemen, it is past 6 o'clock. We have had a very fruitful afternoon and a very interesting afternoon. Are you through with these gentlemen or do you want them to come back?

Mr. BEAUDRY: Mr. Chairman, I would like to ask one question, which I think has some bearing.

By Mr. Beaudry:

- Q. Mr. Swenson, you made various references to a 50 per cent mark-up to the distributor as a follow-up of the example you gave of the normal mark-up as far as shampoo is concerned. That is at first sight a very considerable mark-up for just the process of distribution. Going over the figures you have quoted earlier I find that your figures—I think you quoted approximately \$8 million a year—I think this was one of your answers to Mr. Phelan at the beginning of your examination, that is, the group that make up your association would sell approximately \$8 million a year?—A. But you understand I cannot give those figures because the Bureau of Statistics does not separate us from the toilet goods so that anything told you it is just a question and then you get an answer and then you multiply it out and it may have no bearing on it at all.
- Q. I will assume that that is an approximate figure. You have also mentioned that there are 61 manufacturers who, therefore, would average \$130,000 a year. You mentioned that there are 69 jobbers who would average, therefore, \$110,000 a year sales, which brings me to this question. You referred earlier to the chaotic conditions as being mostly the inability of distributors to gauge cost of selling, in your own words, which I think would reflect on their risk value as credit?—A. Yes.
- Q. Now, I would also assume—and I would like you to tell us yes or no to this—that the average business doing \$130,000 worth of business a year could not afford the services of a credit manager?—A. That is correct.
- Q. Now that we have come to an average of \$110,000 a year sales for each one of those 69 jobbers, would you tell the committee which, if we break it

further down into 13,000 customers which you have pointed out are existing—I think you said 7,000 barbers and 6,000 beauticians—

Mr. PHELAN: 9,000.

By Mr. Beaudry:

- Q. The total being therefore 16,000—the 16,000 are being serviced by 69 people which is approximately 170 customers to each jobber. Would you care to tell us—and I think this has quite a deal of bearing as to the relationship between margin and actual profit of the jobber, would you care to tell us the size of the stock, for instance, maintained by the average beautician, if you can tell us?—A. Are we down to a hairdresser?
- Q. To a hairdresser, yes—the stock—could you give us the dollar value?

 —A. I would think it would be just a few hundred dollars.

Q. Would you say \$300?—A. Say \$300 to \$500.

Q. And the cost of these supplies that are being sold, would that not imply also that there must be a fairly high frequency of calls on the customer by the jobber or his employees? A. That is true, yes.

Q. And that each one of these calls is only for a small proportionate amount of the total of \$110,000 a year that he would do?—A. That is right.

Q. And that therefore the cost of a call on each one of the consumers is high, or even very high?—A. That is right. Well, high.

Mr. Beaudry: Thank you.
The Chairman: Mr. Murray?

By Mr. Murray:

- Q. If this minimum resale price maintenance should be prohibited and articles such as Toni, and other articles of your line should be slashed to a point where there is no money in them, would there be a tendency on the part of the operator to increase the price of other forms of service to the public?—A. Would you mind re-stating that question again? You are going to have the price of Toni cut down to let us say one-half of what it is today?
- Q. Yes. Would there be a tendency on the part of the operator to increase the price of her other services in order to compensate for her loss in the other end?—A. She is not involved with Toni. You see, Toni is a competitor with the hairdresser. It was set up to make it possible to save a lady going to a hairdresser and paying from \$5, to \$6 for a hairdressing. She can go to a drug store and pay only \$2 for a Toni.
- Q. You have said that if a merchant may have \$500 worth of stock on hand. If he is going to take a loss on that merchandise, would there not be a tendency on his part to increase other rates for services which he renders in order to compensate for that loss?—A. After all, the thing boils down to this: the owner of the beauty shop and the operator must earn a living wage.

Mr. Murray: Well, I think the tendency would be to increase the cost of her other forms of service.

The CHAIRMAN: Gentlemen, I think we have had a very informative afternoon. I understand that the program for tomorrow includes the Canadian Pharmaceutical Association and the Ontario Retail Druggists Association. We are now adjourned until 10:30 tomorrow morning.

The committee adjourned.

APPENDIX A

BRIEF SUBMITTED BY THE ALLIED BEAUTY EQUIPMENT MANUFACTURERS' & JOBBERS' ASSOCIATION TO THE JOINT COMMITTEE OF BOTH HOUSES OF PARLIAMENT APPOINTED TO CONSIDER THE INTERIM REPORT OF THE COMMITTEE APPOINTED TO STUDY COMBINES LEGISLATION, TABLED IN THE HOUSE OF COMMONS, FRIDAY, OCTOBER 12, 1951; AND TO CONSIDER APPROPRIATE AMENDMENTS TO THE COMBINES INVESTIGATION ACT BASED THEREON.

I. Introduction

The Allied Beauty Equipment Manufacturers' and Jobbers' Association wishes to express its appreciation to this Committee for extending to it the privilege of representing its views on this question of resale price maintenance.

This Association is the recognized trade association of manufacturers and distributors in Canada of beauty supply products which are sold to approximately 7,000 hairdressers and beauty parlors and 9,000 barber shops throughout Canada. The Association presently has a membership of slightly in excess of 100 firms.

In the beauty and barber supply industry the products manufactured are usually known to the trade as "Professional products" since they are used by beauticians and barbers in performing a service to their customers or patrons and, generally speaking, such beauty and barber supply manufacturers and dealers do not sell their products for ultimate sale over the counter to the public. In other words, these professional products which are purchased by beauticians and barbers represent a necessary cost of doing business to them.

II. Facts relating to the Beauty Supply Industry

- 1. No attempt has been made to increase prices of beauty supply products to the hairdresser since 1939, except for the addition of increased excise and sales taxes. What other industry in Canada can make this claim? With the exception of the passing on of these Federal taxes, the hairdressers pay no more for their merchandise today than they did before World War II. This curious situation is due to the keen competition that exists in the beauty supply industry both the manufacturing and distributive levels of trade. Because of the increased Federal taxes, it is true that some items of merchandise will cost the hairdresser as much as 30 per cent more than was paid in 1939. On the other hand there are items of merchandise that will cost less today than in 1939. On an overall basis, this Association estimates that there has been an increase in cost of beauty supplies to the hairdressers' shops of approximately 15 per cent which is represented entirely by the increase in Federal excise and sales taxes.
- 2. Only about 10 per cent of a hairdresser's gross income from business is necessary to pay for the cost of beauty supplies which are obtained from the beauty supply industry.
- 3. The desire of beauty supply manufacturers to continue the policy of resale price maintenance with reference to the sale of trade-marked and branded merchandise is not in order to increase prices but merely to maintain a condition of orderly merchandising. In the past, this industry has suffered

severely from cut-throat price practices which were prevalent and which caused numerous bankruptcies and the forcing of many dealers out of business. The beauty supply industry adopted a resale price maintenance policy in an endeavour to eliminate these chaotic conditions. It is interesting to note that since 1945, due to the higher cost of doing business, many dealers have urged their manufacturers on occasions to raise their prices. This has been invariably resisted by the manufacturer who is well aware of the competition existing in this industry at the manufacturer's level. Consequently, manufacturers or dealers, or both of them, have had to curtail their own margin of profits since 1945 in order to maintain the prices to the hairdresser at the lower level. The manufacturer, from past experience, knows that many of its branded articles would be used by dealers as loss-leaders if the manufacturer were to lose control completely over resale prices.

- 4. In the beauty supply industry the manufacturers operate on a percentage mark-up ranging between 20 per cent and 50 per cent and the dealers operate on a percentage mark-up ranging from 33½ per cent to 40 per cent. These are historic mark-ups in this industry and we submit that they are not unreasonable, particularly bearing in mind the percentage mark-ups that were revealed in other industries by the Royal Commission on Prices—1949.
- 5. In Canada, there are today approximately 65 manufacturers of beauty supply products which are distributed to hairdressers by approximately 75 dealer organizations. In this connection, we wish to stress the moderate size of the manufacturing firms and dealers' establishments in this industry.
- 6. The big problem today which faces this industry is the fact that the dealers are not for the most part, financially secure. However, any effort to increase prices has been resisted to date by the manufacturers due to the keen competition that exists in this industry.
- III. Reasons why the association favours a policy of resale price maintenance
 - 1. Resale price maintenance favours competition.
 - (a) In an industry such as the beauty supply industry, a policy of resale price maintenance does not eliminate competition. In fact very keen competition exists amongst the manufacturers and amongst the dealers. Because this is so, price maintained goods are still subject to competition from similar products in the same industry.
 - (b) Resale price maintenance tends to prevent economic concentration in this industry. This Association is definitely of the opinion that such a policy helps to keep small dealers in business. If the policy of resale price maintenance was abolished we are confident that many beauty items of merchandise would be used as loss-leaders and that this would have the effect of driving many of the dealer organizations out of business. This whole question of whether unlimited price competition will maintain competition generally has been thrashed out many times particularly in the United States. The best view in our opinion on the effect of price cutting, insofar as it affects the consumers was set forth in an article entitled "Cut-throat Prices, the Competition That Kills". This article appeared in Harper's Weekly, November 15th, 1913 and was written by Louis D. Brandeis who, shortly afterwards, became a Justice of the Supreme Court of the United States. A relevant part of this article reads as follows:

When a trade-marked article is advertised to be sold at less than the standard price, it is generally done to attract business to the particular store by the offer of an obviously extraordinary bargain. It is a bait—called by the dealers a "leader"; but the cut-price article

would more appropriately be termed a "mis-leader", because ordinarily the very purpose of the cut-price is to create a false impression . . . The evil results of price-cutting are far reaching. It is sometimes urged that price-cutting of a trade-marked article injures no one; that the producer is not injured, since he received his full price in the original sale to jobber or retailer; that the retailer cannot be harmed, since he has cut the price voluntarily to advance his own interests; that the consumer is surely benefited because he gets the article cheaper. But this reasoning is most superficial and misleading . . . The process of exterminating the small independent retailer already hard pressed by capitalistic combinations would be greatly accelerated by such a movement. Already the displacement of the small independent businessman by the huge corporation with its myriad of employees, its absentee ownership, and its financial control, presents a grave danger to our domocracy. The social loss is great; and there is no economic gain. "But the process of capitalizing free Americans is not an inevitable one. It is not even in accord with the natural law of business. Shall we, under the guise of protecting competition, further foster monopoly by creating immunity for the price-cutters? Americans should be under no illusions as to the value or effect of price-cutting. It has been the most potent weapon of monopoly—a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secured by this means the co-operation of the short-sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain; and, selling his birthright for a mess of potage, becomes himself an instrument of monopoly.

It is important to remember that Mr. Justice Brandeis, of all the American judges, had a greater knowledge of the working of the American economy. Consequently, any opinion of his, we submit, should be treated with the greatest of respect. Furthermore, from perusing his judgments and writings, it can definitely be established that he was no lover of big business. This was well established in his famous book "The Curse of Bigness".

- 2. Retail price maintenance promotes economic efficiency
- (a) By prescribing minimum and maximum prices on branded articles, a policy of resale price maintenance has the effect of providing a more stable price structure to the advantage of the manufacturer, dealer and consumer. This is certainly true in the case of the beauty supply industry when one looks back at the chaotic conditions that prevailed in this industry prior to a policy of resale price maintenance being established by individual manufacturers.
- (b) Resale price maintenance gives the necessary protection to the manufacturer in connection with the sale of trade-marked or branded articles. It creates public confidence in the product. Human nature being what it is, if prices of branded articles vary from recognized prices, the consumers suspect that the quality of the produce has deteriorated. This suspicion is particularly so in the case of branded articles that are used as loss-leaders. The Royal Commission on Price Spreads, 1935, went into this matter in great detail as part of their investigation into price spreads and mass buying practices in Canada. In their report at page 229 they recognized the fact that customers react in this manner when they made the following statements:

"Likewise, a manufacturer, who has built up a wide demand for his products, is injured when these are regularly sold at cut prices. Because the profit margin is thereby lost on such goods, competitors of the price-cutter lose interest in the goods and push more profitable lines. On the other hand, consumers who tend to connect price with quality are apt to suspect that the quality is deteriorating when well-known mechandise is offered at cut prices. Thus, although the manufacturer may feel an initial stimulus in demand because of the lower prices at which his products are being offered, this may soon be lost as public interest wanes."

More recently, we got a similar psychological reaction on the part of American consumers in New York city when such large retail organizations as Macy's and Gimbels slashed their retail prices on many branded articles. While these sales were in progress, a number of American manufacturers whose branded articles were affected, ran large advertisements in the New York newspapers re-assuring their customers that the quality of their products had not deteriorated and that they, as manufacturers, did not favour ruthless price slashing. Obviously, these manufacturers would not have gone to this expense had they not felt from experience that consumers of branded articles would have reacted in this manner.

(c) Resale price maintenance involves the use of fair prices. industry such as the Beauty Supply Industry where competition is great, a manufacturer cannot allow his fixed prices to get out of line, because, otherwise he would lose out to his competitors. manufacturer in a competitive business such as the beauty supply business who wants to sell his product knows better than anyone else what a fair price is. This was the view that was taken by one of the wisest American judges, namely Mr. Justice Oliver Wendell Holmes of the Supreme Court of the United States. In the case of Dr. Miles Medicine Co. v. Park & Sons Co. (1911, 220 U.S. 373,) the plaintiff had worked out a scheme of resale price maintenance. scheme had been broken by the defendant company. The majority of the United States Supreme Court held that no price maintenance scheme could be enforced through an injunction. Mr. Justice Holmes dissented and wrote one of his famous dissenting judgments on the effect of competition as a method of fixing a fair price. 409 of the report he said in his dissenting judgment the following:

"I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article (here it is only distribution), as fixing a fair price. really fixes that is the competition of conflicting desires. none of us, can have as much as we want of all the things that we Therefore, we have to choose. As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to buy it and buy something else. Of course, I am speaking of things that we can get along without. There may be necessaries that sooner or later must be dealt with like short rations in a shipwreck, but they are not Dr. Mile's medicines. With regard to things like the latter, it seems to me that the point of most profitable returns marks the equilibrium of social desires and determines the fair price in the only sense in which I can find meaning in those words. The Dr. Mile's Medical Company knows better than we do what will enable it to do the best business. We must assume its retail price to be reasonable, for it is so alleged and the case is here on demurrer; so I see nothing to warrant my assuming that the public will not be served best by the company being allowed to carry out its plan. I cannot

believe that in the long run the public will profit by this Court permitting knaves to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get... I think also that the importance of the question and the popularity of what I deem mistaken notions make it my duty to express my view in this dissent."

- IV. Association's criticism of MacQuarrie Committee's views on resale price maintenance
 - 1. The Committee in its report made the following statement at page 17:

"The direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price-maintained goods; this is one of the main objectives of the practice. It has been argued that competition is merely transferred from price to service. On this point, we find ourselves in agreement with the British White Paper:

'It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that, in order to attract more customers, a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing.'

We submit that British methods of marketing products are vastly different from North American methods and this is particularly so in the beauty supply industry. In the beauty supply industry the service factor cannot be ignored. Experience has shown that patrons of beauty salons do expect service. The truth of this is borne out as a result of the "Toni experiment" of a few years ago. This new product was introduced into the American and Canadian markets three or four years ago and was designed to permit the customer to give herself a permanent wave. The cost to the customer was considerably less than what she would have to pay in a beauty salon. When "Toni" was introduced there were considerable misgivings on the part of the beauty supply industry. However, four years' experience has shown that "Toni" has had no appreciable effect on the revenues of beauty salons. We suggest that the reason for this is that patrons of beauty salons expect service and are willing to pay something for it.

Also, we would refer to the Report of the Combines Commissioner dated August 31, 1938 relating to an investigation into an alleged combine in the distribution of Tobacco Products in the Province of Alberta and elsewhere in Canada. At the request of Imperial Tobacco Company of Canada, Professor C. A. Curtis prepared an economic analysis of resale price maintenance in the Canadian Tobacco Industry. This economic analysis is set forth as an appendix to the Combines Commissioner's Report and in Professor Curtis' conclusions he stated that from an economic point of view resale price maintenance was an unbalanced and an anti-social practice. However, he qualified this conclusion by stating that the business policy of any organization is not determined entirely by economic considerations and that other non-economic factors enter into the picture. At page 88, he stated as follows:

"As stated at the outset this survey is concerned only with the economic aspects of resale price maintenance. However, the business policy of any concern is not determined exclusively by economic considerations. Other factors besides the economic ones are bound to be

considered in the determination of policy. The relative importance of these various considerations can only be assessed and decided by the concern itself. All that the present analysis has endeavoured to do is to make clear the economic aspects and effects which are relevant to a careful consideration of the whole problem. The absence or presence of resale price maintenance in the Canadian tobacco trade involves other considerations, which from the viewpoint of the Imperial Tobacco Company, or of the whole industry and trade, may be the deciding factors as long as the matter remains one of business policy and private concern."

In so far as the beauty supply industry is concerned, the question of service given to a customer by a beauty salon is, we submit, one of the business factors which the public expects and which must be taken into consideration when fixing a price.

2. On page 17 of its views, the Committee state as follows:

"The same distributors usually handle the goods of rival manufacturers."

In the beauty supply industry, distributors do not always handle goods of competing manufacturers, some handle exclusive lines only, branded lines for which a demand has been created by the manufacturer with quality guaranteed, fully serviced, and with no end loss to the Dealer or shop which policy we submit more than justify the prices being set by the manufacturer concerned. In fact many lines thus handled have met with popular approval from the shops that would hardly have happened if there had been no control of the outlets through whom the goods were available or the prices at which they were sold.

3. On page 18 of its views, the Committee states as follows:

"Resale price maintenance, to be effective, requires some method of enforcement. If a manufacturer merely indicates a resale price but makes no provision and takes no step to enforce it, then he has no real control over his distributors. However, when measures of enforcement are involved, resale price maintenance establishes a private system of law allowing no appeal to the courts of justice, as it is clearly shown in the British White Paper."

Is this reference to the denial of an appeal to a Court of Justice a fair analogy. After all, a manufacturer and a dealer become parties to a contract. The dealer is not compelled to enter into such a contract if he does not like the price arrangements contained therein. We submit that a manufacturer has certain property rights that should be enforced. In the beauty supply industry, a dealer can quite easily shop around and obtain a dealership for some other manufacturer's product, especially since there is great competition at the manufacturer's level.

4. On page 18 of its views, the Committee states as follows:

"Although precise information is lacking, there is some evidence that resale price maintenance contributes to price stability but that the general level of prices, thus stabilized, is higher than it would be under competitive conditions and production more unstable."

We note that the Committee admits in this Report that they had no precise information to support their contention that resale price maintenance results in a higher level of prices. It would appear as if the Committee has relied to a considerable extent at least upon the opinion of one A. R. Oxenfeldt,

as set forth in his book "Industrial Pricing and Market Practices". What qualifications has Mr. Oxenfeldt and what experience has he had in the merchandising of goods?

5. On page 20 of the Committee's views, the following statement is made:

"Resale price maintenance, by prohibiting any normal price reduction, affords an effective protection against "loss-leaders" in the field of price-maintained goods. However, the Committee does not think that to withdraw from the retailer the right to make any price reduction is a satisfactory way of preventing unfair and excessive price-cutting. We are of the opinion that more direct and desirable weapons can be found to curb "loss-leaders".

We note that the Committee admits that resale price maintenance agreements represent one way whereby the practice of using branded articles as loss-leaders can be eliminated. Notwithstanding this, the Committee apparently is of the opinion that better methods of coping with this problem can be found. However, we can find no mention of any such alternatives. What views has the Committee on this important subject?

6. On page 20 of its views, the Committee states as follows:

"Second, high margins do not necessarily mean high profits. High margins merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover, high margins provide a strong inducement to enter into the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result."

Does the Committee feel that the mark-ups are too high on all merchandise governed by resale price maintenance agreements? Insofar as the beauty supply industry is concerned this Association respectfully submits that this is not the case. We do not believe that the percentage mark-ups granted either at the manufacturer's or dealers' levels are too high or are out of line in any way. We note, in this connection, that the Committee fears that the granting of services provides certain wasteful forms of competition. It is our view that, when arguing this point, the Committee should distinguished between essential and no-essential types of articles. The element of waste perhaps does exist in the case of the distribution of milk and bread. However, in the case of distribution of cosmetics, which is in a different category, is the manufacturer not in a better position to decide how much service must be given in order to compete? If the same manufacturer gives too much service, thus permitting his prices to reach too high a level, we submit that in such circumstances he would price himself out of business. Further more, we submit that in an industry as competitive as the beauty supply industry a consumer can decide whether the price is too high or not without having to have anti-resale price maintenance legislation to assist him.

The Committee refers to the fact that there are perhaps too many retail outlets arising from resale price maintenance policies. Who is in the best position to judge on this point? We submit that the prospective retailer is in the best postion to determine whether the demand is sufficient to warrant the establishment of a new retail outlet.

7. On page 20 of its views, the Committee states as follows:

"Resale price maintenance no doubt helps to protect the reputation of branded goods and facilitates advertising and sales promotion. However, the Committee is not convinced by the argument that the reputation of branded goods greatly suffers from normal price variations and that people will think quality has deteriorated, if prices are allowed to vary. If the "loss-leader" is taken care of, normal price reductions will not cause serious problems to the manufacturer."

Here the Committee states that they are not convinced by the argument that the reputation of a branded article suffers greatly from price variations. However, we note that the Committee does not produce any concrete evidence to prove their contention. Against this contention, on the other hand, we have the recent experience of manufacturers of branded articles advertising in New York newspaper at the time of the recent price war there. Also, we have the opinion of the Royal Commission on Price Spreads already referred to in this Brief. We respectfully submit that manufacturers are in a better position to know than anybody else the effect of price variations on the subsequent sales of their branded articles.

Insofar as the beauty supply industry is concerned, the manufacturers most certainly would have this fear on their minds of the effect of slashed prices on future sales of their products.

8. On page 20 of its views, the Committee states as follows:

It is true that advertising becomes more effective if the supplier can maintain a resale price. However, we think that advertising is too powerful a force to need special encouragement and we are not too worried by the slight disadvantage which would ensue if resale price maintenance were prohibited.

The Committee contends that advertising is too powerful a force today. Upon what evidence has the Committee reached this conclusion? Since advertising represents a cost of doing business why would manufacturers, who know their own problems better than anybody else, rely upon it as a method of stimulating sales? Advertising is most certainly a necessity in the beauty supply business.

9. On page 21 in its conclusions and recommendations the Committee makes the following statement:

As to the 'loss-leader' device, the Committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger; extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced that there can be found other effective and more desirable methods of controlling the 'loss-leader' than minimum resale price maintenance.

The Committee states that the "loss-leader" device is not compatible with the public interest. Yet, in our opinion, the Committee does not effectively recommend just how this problem can be coped with other than to cast doubt upon the validity of a present day method that does curb it, namely resale price maintenance. If the problem of curbing of loss-leaders does exist, we respectfully submit that it is of no use to say that because of the present day period of inflation, extreme forms of price cutting are not likely to occur. This inflatory period will not always prevail. Therefore, we are of the opinion that the Committee has adopted a negative approach to this problem.

V. Resale Price Maintenance Developments in the United Kingdom and The United States

This whole question of resale price maintenance agreements has been gone into many times before in both the United Kingdom and the United States. With reference to the English experience the MacQuarrie Committee only refers to a

recent British White Paper entitled "A Statement on Resale Price Maintenance". However, the Sankey Committee went into this same matter very thoroughly in 1931 and they had the following comments to make concerning the practice of making resale price maintenance agreements:

"The position of the consumer in relation to price maintained goods is similar to that of the retailer in so far as he can refuse to buy any particular brand of goods. If a man buys a particular brand at a particular price he thereby shows that in all the circumstances he prefers that article at that price to other branded or unbranded goods. The question whether his preference is well founded, and whether the goods are reasonable in price having regard to costs of production and distribution, is of course open. What appeals to him is the quality of the goods, which he associates with the brand. We were informed that a point which has also told in favour of the brand system in recent years is the careful and hygienic way in which many branded articles are now packed.

Another point which was put to us by several witnesses relates to the psychology of the consumer in relation to price cutting. We were told that where the prices fixed for branded goods are not enforced consumers lose confidence in the quality of the goods, in the reasonableness of the price ordinarily charged or in the good faith of the manufacturer. Conversely, it was stated that consumers are very ready to buy price maintained goods provided they regard the price as reasonable, and that they appreciate the knowledge that they can buy similar goods at the same price wherever they happen to be. The price maintenance system, we were told, tends to promote an atmosphere of harmony between the retailer and his customer and to make selling easy and expeditious".

The same Sankey Committee came to the following conclusions on this subject:

- "(a) We hold that the ordinary right of freedom to contract ought not to be withdrawn without some compelling reason.
 - (b) We do not regard the price maintenance system as free from disadvantages from the public point of view, but we are not satisfied that if a change in the law were made there is any reason to think that the interests of the public would be better served".

In the United States merchandising methods are more akin to those prevailing in Canada. This question of resale price maintenance has been the subject of books. Probably the most competent study of resale price maintenance which has been made was published by Professors E. R. A. Seligman (Columbia University) and R. A. Love (College of the City of New York) under the title "Price Cutting and Price Maintenance" (1932). On page 267 of this lengthy and unbiased work, the authors made the following statements:

"So-called cut-throat competition is not true competition; it is brute competition. In the first place, the avowed object of cut-throat competition is to cut the throat of the competitor.....Cut-throat competition is designed to remove the rival entirely from the arena in order that the successful competitor may remain in control. Cut-throat competition results in monopoly. The temporary benefit to the consumer from the reduction in price will in the end be more than outweighed by the evils of monopoly. Cut-throat competition, therefore, is pseudo-competition, not real competition."

"What we have termed pseudo-competition is in common parlance often called unfair competition. The word 'unfair' connotes something immoral, something unethical. In the long run nothing can be morally

right unless it is economically sound; for the roots of both ethics and economics are to be found in social considerations.

We are accordingly led to the conclusion that the evil with which price maintenance seeks to cope, namely, the evil of certain forms of cut prices, has no justification in either economics or ethics."

"Consumers themselves will in the long run be benefited by the adoption of price maintenance in the sense that, as we have seen, the welfare of the consumer depends ultimately on the prosperity of the producer. And in the second place, there is no such antagonism between manufacturers as a class and retailers as a class. The real conflict is found in the attitude of the few retailers who think that their interests would be jeopardized by the adoption of price maintenance, and whose success at present is being achieved at the cost of other more fair-minded competitors. When we consider that against this comparatively limited class stand the bulk of the retailers, the mass of the manufacturers and the permanent interests of the consumers, we are forced to the conclusion that in principle at least price maintenance is a logical inference from the doctrine of true competition, and that the denial of price maintenance denotes a perpetuation of the pseudo-competition from which modern American life is suffering. Those forms of price cutting which involve the 'leader' policy, the sale below cost, and the necessity of devious methods of securing supplies from others than the producers themselves, however, profitable to the individual, are open to criticism as constituting destructive and not constructive competition, as being economically unsound and therefore ethically unjust. Price cutting of this kind, in short, is a form of unfair competition; price maintenance is a step toward fair competition."

Also this question of resale price maintenance has been investigated in the United States by the Federal Trade Commission and various Congressional Committees from time to time for many years. Notwithstanding the debate that has raged in the United States for considerable years on this subject, it is a fact that most of the states have enacted Fair Trade Laws permitting resale price maintenance agreements. In 1937 at Washington the Sherman Anti-Trust Act was amended by the Miller-Tydings Act, which amendment permitted resale price maintenance agreements in connection with branded merchandise entering into inter-state commerce in States that had Fair Trade Laws. This law took the form of a proviso that was added to Section 1 of the Sherman Act that had originally said that a combine in restraint of trade was illegal. The relevant part of the Miller-Tydings proviso reads as follows:

Provided, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect, in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 5, as amended

and supplemented, of the act entitled "An act to create a Federal Trade, Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Within the last few months, the Supreme Court of the United States has interpreted the Miller-Tydings Act in the Schwegmann case which has caused much comment. All that the Schwegmann case decided was that the Miller-Tydings Act does not sanction, as to transactions in interstate commerce, the enforcement of price-fixing under State fair trade laws, against a retailer who has not entered into an agreement prescribing a minimum retail price.

It follows, therefore, that where a retailer has signed a fair trade contract including a provision to maintain a minimum retail price for merchandise, such contract is enforcible against him though the transactions involved are in interstate commerce. Of course, where a State has a fair trade practice act and a retailer has signed such an agreement, it is likewise enforcible against

him in intrastate commerce.

The Miller-Tydings Act which recognizes the desirability of resale price maintenance is still part of the law of the United States. The trend of United Stated Federal and State Legislation is in the direction of giving a limited sanction to resale price fixing of branded and trade-marked goods.

VI Conclusion

In the beauty supply industry, each manufacturer has a property interest represented by the goodwill in his trade mark or brand which is substantial. Large sums of money have been invested by the manufacturer in creating that goodwill. Naturally the owners of these property rights are anxious to prevent practices which they are convinced are damaging and will decrease the value of their business.

When a beauty supply manufacturer fixes the margin of profit to a dealer on a branded product he must, if he wishes to continue in business, consider the following factors:

- (a) The margin of profit that will afford the dealer a sufficient inducement to stock and push the sale of his product.
- (b) The margin of profit must not be so high as to deter the public from purchasing it or to induce them to look out for a substitute which will equally serve their purpose at a lower price.

In an industry such as the beauty supply industry, which has always been faced with the problem of predatory price cutting, these factors provide the necessary protection which will prevent the public from being exploited.

In conclusion, the Association wishes to go on record before this joint Committee as being opposed to the recommendations relating to resale price maintenance contained in the Interim Report of the MacQuarrie Committee dated October 1, 1951. This Association is, of course, not in a position to know how such recommendations will affect other industries. All that we do know is that these recommendations, if implemented by legislation, would definitely have a harmful effect on the beauty supply industry.

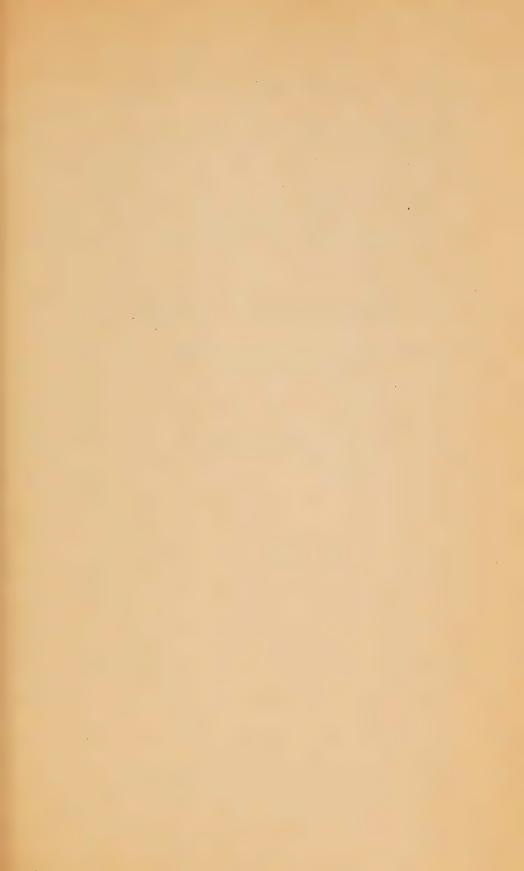
All of which is respectfully submitted.

Dated at Ottawa this 19th day of November, A.D. 1951.

ALLIED BEAUTY EQUIPMENT MANUFACTURERS' AND JOBBERS' ASSOCIATION

By its Ottawa Counsel:

M. E. CORLETT, 48, Sparks Street, Ottawa, Ontario.





HOUSE OF COMMONS

. NOC

Fifth Session—Twenty-first Parliament
1951

(Second Session)

CALXY 2 -51 C54

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE No. 4

THURSDAY, NOVEMBER 22, 1951

WITNESSES:

Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association;

Professor H. J. Fuller, Ontario College of Pharmacy.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

CORRIGENDUM

Evidence, Tuesday, November 20, 1951:
Page 56, line 13, the figure \$3,301 should read \$2,301.

MINUTES OF PROCEEDINGS

Thursday, November 22, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Hawkins, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Dickey, Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Roberge, Shaw, Stuart (Charlotte), Thatcher.

In attendance: Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association; Professor H. J. Fuller, Ontario College of Pharmacy.

At the request of Mr. Carroll, the Clerk was ordered to procure from the Allied Beauty Equipment Manufacturers' and Jobbers' Association its Act of Incorporation; any by-laws made and passed on by the proper authorities in Ontario, and the Minutes of all meetings and financial statements since the inception of the Association.

Mr. Preston was called, filed briefs on behalf of the Canadian Pharmaceutical Association and the Ontario Retail Druggists Association, which are printed as *Appendices A* and *B* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Professor Fuller was called and questioned.

The witnesses retired.

At 1.00 o'clock p.m., the Committee adjourned until Friday, November 23 at 10.30 o'clock a.m.

A. L. BURGESS, Clerk of the Committee.



EVIDENCE

NOVEMBER 22, 1951.

10:30 a.m.

The Chairman: Gentlemen, we have a quorum. Come to order, please. Mr. Carroll: Mr. Chairman, there was some doubt in the minds of some people yesterday as to just what the real business of the organization we had before us was and I am going to ask counsel if he would be able to procure for the committee the Act of Incorporation, which no doubt is easy, and any bylaws that were made and certified to by the proper authorities in Ontario; and then, the minutes of their meetings; and, also, their financial statement. I am asking this not only in the interest of this organization but also in the interest of those who may happen to be in opposition to the organization; because there were certain statements made yesterday which some people think were rather, if not exaggerated, at least not entirely susceptible of proof.

The CHAIRMAN: I will ask Mr. Phelan to take care of that for you.

Mr. Beaudry: Mr. Chairman, on a matter of privilege. May I ask that the record be corrected at page 56? In quoting the figures from Department of Income Tax on Tuesday I quoted a figure of 2301 and the record makes it read 3301.

The CHAIRMAN: That will be corrected Mr. Beaudry.

Mr. THATCHER: On a point of order, Mr. Chairman, I think the desire of the chairman to get all these briefs in as quickly as possible is commendable; but I must say that I simply cannot absorb them quite as rapidly as they are being put before us. On Tuesday we had the brief of the Canadian Congress of Labor, yesterday we had the brief of the Allied Beauticians Association, and today we have two more briefs, 113 pages in length. Personally, I don't see how we can read these briefs let alone absorb them in such a short time. I suggest that with our other Parliamentary work it is physically impossible for us to give the evidence the attention it deserves. The people who come before us have spent a lot of time, effort and money in preparing these briefs and I submit they have a right to be properly heard. I think we may as well realize right now, that if we are to do this job properly, and arrive at a proper decision, we cannot do it in the few days remaining between now and December 15. It would be better to bring in an interim report. I suggest that when we sit tomorrow, instead of hearing another brief, we finish the one that we have before us today, and bring back Mr. MacDonald for a while.

And there is another thing, Mr. Chairman. I want to object again, if I may, to the 2-1/2 and 3 hour sittings—which we have been having. That period is too long for a committee to sit, particularly with all the other committees which are meeting and with all the other work that we have to do. Therefore, I appeal to you to try to stop this undue haste. Surely we should not jam through briefs at the rate we have been doing.

The Chairman: Mr. Thatcher, I must say that I too have found difficulty in keeping up with House work and reading these briefs at the same time. As far as tomorrow is concerned, since we have already arranged to have the Canadian Retail Federation appear before us, I think we will have to go on with that. It would be unfair at this moment to change that appointment. I think, perhaps, we should have the steering committee meet tomorrow so that

we can discuss the work coming before us. I suggest that we can do that better tomorrow morning than just at the moment, when our plans have

already been made for hearing these people.

In fairness to the retail merchants, may I say that they are expecting to be here tomorrow morning and they have made their plans accordingly, since we told them to be here; so I think we should hear them tomorrow morning; and then I think consideration should be given to what we are to do in the days ahead of us and perhaps have the Combines Commissioner back the first of next week.

Mr. THATCHER: I understand that the druggists and the pharmaceutical people are appearing before us today; I suppose if we are not finished with them today that they would come before us again tomorrow?

The CHAIRMAN: In that matter I am entirely in the hands of the committee. We want to do a good job and get through the work as best we can. Do members find that sitting to one o'clock is too long?

Mr. Beaudry: Let us determine that, Mr. Chairman, at the end of this schedule which you now have before you. In the meantime, we might dispose of this matter of our hours of sitting and see how the members feel about how long they should sit.

The CHAIRMAN: Yes, let us agree on that now. Are the members in favour of sitting until 1 o'clock? Do the members find 10.30 to 1 o'clock too long?

Some Hon. MEMBERS: No.

The CHAIRMAN: As I say, in that matter I am in the hands of the committee. I am not going to put it to a vote, but I would ask for an informal show of hands. Those in favour of sitting from 10.30 to 1 o'clock?

Those in favour of sitting from 10.30 to 12.30?

Our hours until further notice, then, will be from 10.30 to 1 o'clock.

Mr. THATCHER: Could it be two and a half only?

The CHAIRMAN: We will arrange to stop sharp at 1 o'clock.

Hon. Mr. Beaubien (The Joint Chairman): I might say that yesterday as chairman I sought several times to stop the committee at 6 o'clock but I did not get very much support from the members who wanted to keep asking questions.

Mr. Fleming: Yes, and there were some who wanted to ask more questions but were not able to do it. Will it be possible for us to have these people before us again, Mr. Chairman?

The CHAIRMAN: At the end of this meeting we will be able to decide what should be done. This is a very important branch of the inquiry, as far as their subject is concerned; we can decide whether we should have these witnesses back tomorrow, or whether they should come back on another occasion.

Mr. Shaw: On a point of order, Mr. Chairman, I just want to make this observation: these things are being thrown at us too fast; we just have not got the time to give them the consideration they deserve. I hope we will be able to give some thought to that.

The CHAIRMAN: Thank you, we will. Mr. Burgess points out that tomorrow's brief was distributed to members on Tuesday.

Mr. Fulton: And we are going to deal with them tomorrow?

The CHAIRMAN: Yes, tomorrow we will have the retail merchants. Today we have two groups coming before us, the Canadian Pharmaceutical Association, and also the Ontario Retail Druggists Association.

Mr. FLEMING: Just a moment, Mr. Chairman; is counsel for the committee going to secure for us the information requested by Mr. Carroll just a moment ago?

The CHAIRMAN: Yes, how about that, Mr. Phelan?

Mr. PHELAN: Yes, I will produce that for the benefit of the committee.

The CHAIRMAN: Would it be useful to have these briefs before the committee as we proceed?

Mr. Fleming: I think we had better wait and see as we go along. In some cases we might want to have the witnesses back for further examination.

Mr. Beaudry: Might I suggest that we ask counsel—and that we help him, if necessary, as members of the committee—if, in connection with each witness, he would establish some fundamental facts concerning the industry in which he is interested. I think it would facilitate the work of the committee if we would have before us the basic facts respecting the industry or organization concerned. I do not wish to labour the point, but each of us might proceed in the way of examination and in that way we might arrive at certain conclusions which might possibly be erroneous; therefore, I suggest that we might adopt a procedure of that kind with a view to facilitating our work. Possibly we might institute that practice this morning.

The CHAIRMAN: I think counsel in his opening questions might bring out the facts about each association: its location, membership, activities, and so on, before starting with the actual detailed questioning.

Now, gentlemen, we have two groups here this morning: the Canadian Pharmaceutical Association and also the Ontario Retail Druggists Association. The second of these associations (the Ontario Retail Druggists Association) have said that they are willing to stand by the brief submitted by the Canadian Pharmaceutical Association, although they did file a small brief of their own.

Mr. Fulton: Will those briefs be printed in the record?

The CHAIRMAN: All the briefs that have been received up to date have been printed in the record as an appendix.

Mr. Fulton: Have you received any which you do not consider worth printing?

The Chairman: We have as yet received no brief which we think is not worthy of being printed as an appendix.

Mr. Fulton: These briefs will be printed as an appendix to our proceedings of this day?

The CHAIRMAN: Yes. Now, gentlemen, we have Mr. Preston and Professor Fuller as witnesses here.

Mr. Phelan: Mr. Preston only is to appear, I believe.

The CHAIRMAN: Mr. Preston, will you come over here, please?

Mr. Preston, the procedure here has been for the witness to give a short summary of the brief which has been presented and read, then our counsel will ask you the opening questions and then you will be in the hands of the individual members of the committee.

J. W. Preston, Secretary, Canadian Pharmaceutical Association, called:

The WITNESS: Mr. Chairman, learned counsel and gentlemen of the committee: needless to say, it is a pleasure for us to be present this morning and to have this opportunity of presenting our views on the proposed legislation. We represent the Canadian Pharmaceutical Association. Our total membership is 4,236, and comprises every retail drug store owner practicing as a retail druggist in the dominion of Canada.

Price maintenance has been an established practice for the past 25 years and we think has been an influence for good on the economy of our country.

It has not in any way been a factor in inflation, and we do not think if it is continued it will affect the cost of living index at all. I fear that there is some confusion in the minds of some people on the phrases "price fixing" and "price maintenance". We would not for a moment argue on what the MacQuarrie committee calls horizontal price fixing. That is illegal in Canada, we are glad to say. Price maintenance is a safe-guard of every independent retail operator against certain unfair trade practices of the larger operators. Resale price maintenance is the only effective medium to combat the loss-leader practice; or, as someone has said, facetiously, the misleader practice.

Similar words are to be found in the MacQuarrie report, although the report agrees that the iniquitous device of the loss-leader is very bad, they do not suggest any remedy. They suggest only that price maintenance be made illegal without in any way attempting to suggest a remedy for it except to say that probably at some later date in some far off promised land they may

find a remedy.

Price maintenance has been in effect for, as I say, twenty-five years. The loss-leader device is not a new device; it has been in practice particularly in the province of Ontario since the turn of the century, and the only effective means that has been found so far to curb it is price maintenance as we know

it today.

We maintain that without price maintenance the loss-leader would be on our doorstep tomorrow and chaotic conditions similar to those in the 1920's would result. This would operate to the detriment and the undoing of the small independents. Together the larger operators can afford to sell all price maintained nationally advertised articles at loss-leader prices even below cost, and in practice perhaps over the years secure a monopoly on the sale of all nationally advertised products. We do not like monopolies; they are bad for the country, whereas the independent merchant is the backbone of every village, town and hamlet. Surely the government will do nothing to hurt him.

Mr. Beaudry: Mr. Chairman, you prefer that we have counsel question before we question the witness on his statements?

The CHAIRMAN: Yes.

By Mr. Phelan:

- Q. Mr. Preston, what about your background? You were a practising druggist?—A. Yes, I have been in the retail drug business since November 1, 1908. All through my life that is the only business that I have practised and know anything about; I do not know anything about any other business but the retail drug business.
- Q. And your present situation?—A. Secretary-manager of the Canadian Pharmaceutical Association.
- Q. How long have you occupied that position?—A. Secretary-treasurer since 1942, and then appointed manager two years ago.
 - Q. And your organization is incorporated?—A. 1907.
 - Q. Under the Ontario Companies Act?—A. Canada Companies Act.
- Q. And you have heard the request of the committee today that you should make available to the committee the charter of incorporation, the by-laws of your organization and minutes of your organization and financial statements of your organization—how many years?

Mr. Carroll: It had no particular reference to this company. I was asking for yesterday's, and of course if it applies to yesterday it will apply to all.

Mr. Fleming: Well, Mr. Chairman, there is a point there. Here is an organization which has been in existence for forty-five years. Are you going

to make them produce all their minute books and all their financial statements? We are flooded now with material. Are we going to deluge ourselves with it?

Mr. CARROLL: I have no interest at all in this company.

The CHAIRMAN: Certainly my understanding and Mr. Fleming's understanding was that where we thought it desirable, where we were not certain of the set-up, we would have a right to ask for that information.

Mr. CARROLL: The only reason I asked for it was that yesterday there were a good many people here—and I am not suggesting anything at all—who thought that the witnesses did not just give a fair indication of what their business consisted of.

Mr. PHELAN: I misunderstood the point of the hon. member. I thought it was to be the practice. Shall we defer the production of these documents in this case until the committee asks for them?

Mr. Fleming: May I make a suggestion on that? I think that is a matter which might well be considered by the steering committee with counsel because, while in some cases it might be of interest, yet if we adopt it as a practice we are simply going to be putting witnesses to a lot of trouble and miring ourselves in something that may be of no use to us.

Mr. PHELAN: I misunderstood that. Shall we defer that?

Mr. FLEMING: The way to do this would be for Mr. Phelan to look at these briefs in advance and if there is anything which needs to be produced he can ask for it.

Hon. Mr. Garson: I do suggest, Mr. Chairman, that in so far as the minutes of these particular associations are concerned, that since one of the important questions we are concerned with is what they do at these meetings—we heard yesterday they just sit around and talk about deals, never mention prices at all—that the minutes might be something which would be of interest in most of the cases of trade associations but not necessarily all this other mass of material.

Mr. Beaudry: Could we be satisfied by taking a span of, say, two years in the minutes?

Hon. Mr. Garson: Not necessarily. I think we might fix in our own minds as we go through different associations those minutes which from the evidence given appear to be material to the issue.

The WITNESS: We would be happy to cooperate in any particular at all.

The CHAIRMAN: We will let that stand until we have heard more evidence and have decided it in the steering committee.

By Mr. Phelan:

- Q. Mr. Preston, we heard that your membership was 4,236. It is a national organization, of course?—A. Oh, yes.
 - Q. 4,236?—A. Except the province of Newfoundland.
 - Q. And all the members are druggists?—A. Yes.
- Q. Are there any manufacturers or jobbers included in the membership?

 —A. No, all retail druggists.
- Q. Well, what about druggists who work for chain stores and department stores?—A. Only the registered store manager is a member of the association.
 - Q. The registered store manager?—A. Yes.
- Q. So that in the case of the chain store and department store the registered store manager is the representative member in your association?—A. Right, that is by the Pharmacy Acts of the different provinces.
 - Q. Then, your association was founded first in what year?—A. 1907.

Q. And did it function between 1907 and 1927?—A. There has never been any suspension.

Q. Was it a part of the Proprietary Articles Trade Association that went

out of existence in 1927?—A. No, not as an association, that I know of.

Q. Well, was there common membership in the two organizations? I observe in your brief on page 5 you say:

"Retail price maintenance has been operating in this country since 1910, and to a much fuller degree in our retail group since 1927."

I wondered what the significance of the year 1927 was in connection with the Proprietary Articles Trade Association against which the trades commissioner had reported unfavourably and which disbanded. Was there a connection between the two prior to 1927?—A. Well, the retail drug business had become in such a chaotic condition due to price leadering and selling at all kinds of prices that many of our members were being forced out of business-they went bankrupt-and Commissioner O'Connor in his report dealing with the Proprietary Articles Trade Association said—and we quote it in our brief—that many of the retail druggists were on the verge of bankruptcy and it applied also to the wholesale distributors—they were in such a precarious position that they felt something should be done or had to be done, so they attempted to form in Canada the P.A.T.A. after the manner that the P.A.T.A. operates in England. There was an investigation and the P.A.T.A. as an organization never came into being. It was declared illegal in Canada under the Combines Investigation Act—I should not say it was declared illegal because there was never a case, but after the investigation on the advice of the commissioner of the Combines Investigation Act, as I understand it, the drug industry withdrew and the organization ceased to exist, and it was never really formed.

Q. That is hardly an answer to my question. After it was formed or in the course of being formed what part did your members have in that associa-

tion?—A. Our retail druggists?

Q. Yes.—A. We had quite an active part in it.

Q. And that was an association of dealers and manufacturers?—A. Manufacturers, wholsalers and retailers.

- Q. And then you had existed as an organization of retailers until the proposed P.A.T.A., which was an organization of both?—A. But we as an organization had not anything to do with the P.A.T.A. Our association is composed of retail druggists. The Canadian Pharmaceutical Association did not take an active part in the P.A.T.A., but the members of our association, which is all the druggists, took an active part.
- Q. I understand the situation—you took an active part and then when that organization was reported on adversely by the combines commissioner you continued to carry on under your own association?—A. Oh, yes.
 - Q. And have done so ever since?—A. Oh, yes.
- Q. Now, what are the activities of your association in the area of sale and distribution?—A. Well, we do not have anything to do with sale and distribution as an association.
 - Q. Or price?—A. Or price, as an association.
- Q. May I take that as final that the association has nothing whatever to do with sale, distribution or price?—A. Yes.
- Q. Then, just what has it to do with?—A. Well, it was originally formed in 1907 with the idea of improving the drug business, and making the pharmacists better pharmacists. It was an educational and scientific body to begin with and in the government here in Ottawa our main business in Ottawa is with the Department of National Health and Welfare because we are endeavouring to give the best health services that it is possible for us to give. In order to do that we felt if we had a national organization we could better co-operate

with the dominion government federally and they could better co-operate with us; in other words, we could be an organization whereby federal legislation

could be disseminated through us to our members.

Q. There are provincial organizations as well?—A. Yes, our by-laws—I am sorry we have not a copy here—but we really are a co-ordinating body. The provincial associations operate provincially under the different Pharmacy Acts. We are composed of the provincial statutory bodies; they are the members that belong to our organization and their members are by virtue of that Act members of our organization.

Q. Is the Board of Commercial Interests a committee of your organiza-

tion?—A. Yes.

Q. It functions within the organization?—A. Yes.

- Q. I shall have something to say about it later. Now, let me come to the problem of volume and distribution. Could you tell me the sales volume at the customer level of the commodities within your trade organization for the year 1950?—A. I think we have them in the brief. It is \$229 million and something.
- Q. Can you break down that gross volume into two classes for me—individual druggists, departmental stores and chain stores?—A. I have not any accurate figures but I am sure those figures would be available from the Bureau of Statistics.
- Q. From your knowledge of the association can you give the committee a rough idea of the breakdown?—A. Well, I would think probably the chain and department stores would represent 25 per cent—that is only a guess.

Q. And the individual 75 per cent?—A. Yes.

Q. Would you, for the benefit of the committee, give another breakdown of that gross volume into proprietary articles—prescriptions, cosmetics and news-stand?—A. Well, we say that the prescription department accounts for 22 per cent. I have not any other figures. The news-stand would be negligible.

Q. Cosmetics?—A. I have not very much idea—say 15 per cent.

- Q. And proprietary would be the balance of the 100 per cent, would it?—A. Well, there are sundries—tobaccos, ice cream—
- Q. I rather hoped that they might be included in your news-stand activity. Instead of the news-stand let us call it sundries. What would sundries run?—A. They might be 10 per cent.

Mr. Fleming: Does that include the lunch counter?

By Mr. Fulton:

Q. Could we get those figures again so we can get them down?—A. I have no figures: I am just thinking in terms of my own store and, of course,—and I say this humbly—I did not sell newspapers or anything like that; I ran what we considered a drug store and I do not know anything about newspapers.

By Mr. Phelan:

Q. Well, from your experience with the trade your estimate would be sundries 10 per cent, cosmetics 15 per cent and prescriptions 22 per cent?—A. Yes, that is sure.

Q. And then I take it that the balance of 53 per cent would be proprietary medicines?—A. Well, patent medicines—I am not sure about that; I did not anticipate that question, but I would not think the patent medicines would

be quite that high.

Q. Would patent and proprietary articles run that high?—A. No, I would think that nationally advertised price maintained articles would run about 50 per cent, but that would include a lot of cosmetics. I would say probably 35 per cent would be patent medicines. I do not think we have the sundries

big enough at 10 per cent because there are a lot of sundries—kodaks, kodak supplies—and in your classification your sundries might be a lot bigger than 10 per cent. It could be up to 20 per cent or 25 per cent. I think about 35 per cent in patent medicines. I still think we are high on the patent medicines. I think 25 per cent would be the limit on that. That is the way we understand patent medicines.

Q. Then you have patent medicines 25 per cent, prescriptions 22 per cent—

A. That is 47.

Q. Sundries 10 per cent, and that is 57—cosmetics 15 per cent—.—A. I would put sundries up to 20 per cent and the balance in cosmetics.

Q. 25 and 22 and 20, and the cosmetics how much?—A. The balance.

Q. What do you mean, "the balance"? -A. Up to 100.

- Q. And on the price maintained articles what is your division of the total—50-50?—A. I would think the volume would be 50 per cent.
- Q. You are speaking of price volume not article volume?—A. No, price volume.
- Q. Price volume would be 50 per cent?—A. Article volume very small, maybe down to 10 or more.
- Q. The article volume, 10 per cent; price volume, 50 per cent?—A. Yes I think that is about the figure.
- Q. Does the trade consist of manufacturers, jobbers and dealers?—A. Manufacturers, jobbers and dealers, yes.
- Q. Are there any manufacturer jobbers in the drug industry?—A. They are part of the drug industry.
- Q. Manufacturer jobbers—those that do their own jobbing.—A. I do not quite understand your question. Does the manufacturer sell directly or through a jobber? Both.
- Q. What percentage would be sold directly and what percentage to jobbers?

 —A. I have not any idea.
- Q. Would you tell the committee as between the manufacturer and the jobber and the dealer what margins prevail generally or specifically in the trade?—A. I think the jobber might work on 15 per cent.

Q. And the dealer?—A. We try to get an average of 331 per cent.

Q. An average of 33½ per cent for the dealer?

The CHAIRMAN: On cost or on selling price?

The WITNESS: On selling price.

By Mr. Phelan:

Q. All these mark-ups are on the selling price?—A. Yes, all on selling price.

Q. $33\frac{1}{3}$ per cent for the dealer, 15 per cent for the jobber; and do you know in a general way what the manufacturer has?—A. I have not any idea.

Q. What services do you supply for the mark-up you get?—A. Well, a complete distributive service.

Q. Let us turn our thoughts for a minute to the subject of resale price maintenance. Would you again define that practice, tell us what you understand by it?

Mr. Fulton: I am sorry to appear technical, but I think there is apt to be some confusion in the record, if not in our minds, resulting from the use of these terms. I think we should be uniform in our terms. I believe Mr. Phelan is using the term retail price maintenance. Are we not speaking of resale price maintenance?

Mr. PHELAN: I thank you. If is resale price maintenance.

Mr. FLEMING: And there was another reason yesterday because we were not in the retail field at all.

Mr. Phelan: It is entirely my mistake. It is resale price maintenance, not retail.

The WITNESS: "Customary definitions of resale price maintenance:

Resale price maintenance 'designates a system whereby the manufacturer endeavours to keep at a level prescribed by him the price of his product charged by retailers and other distributors.'

'... resale price maintenance—by which the manufacturer or owner of a trade-marked product may dictate the price below which it may not

be resold by distributors.'

'that price policy under which the manufacturer of a branded product establishes the price (or the minimum price) at which such product shall be resold to the consumer.'

By Mr. Phelan:

- Q. And so far as that practice is followed in your trade, are there any methods or penalties by which it is enforced?—A. No, sir, not that I know of.
- Q. So, is it without penalty if a dealer sees fit to depart from the manufacturer's specified price? What is the result if the dealer departs from the manufacturer's specified price? Is he at full liberty to do so?—A. Is the retailer at full liberty to depart?
 - Q. Yes?—A. He can depart, yes.
- Q. Is he at full liberty to depart? I put it a little differently. Is he at full liberty to depart?—A. Yes, I would say he is at liberty to depart.
- Q. And what is the result to him if he does depart?—A. Well, in a couple of instances, sometimes a manufacturer—and there have been two instances that I can think of in the last half century in Canada, two instances where a retailer has refused, if that is what you mean, departed from the resale price maintenance and the manufacturer has stopped supplying him with merchandise. The recent case, of course, and the one I suppose that members of the committee are familiar with, is the Montreal Pharmacy attempting to get an injunction against the Charles E. Frosst Company, which the judge ruled out.
- Q. If it became a common practice to depart from the resale price, would you anticipate the same results to be applied, or the same results to follow—the manufacturer would stop dealing with this dealer?—A. I would think so.
- Q. Then I am not sure that I have got the answer to the question from the information you have given me. I would like to know what proportion of the total volume of your business is subject to resale price maintenance?—A. I would think 50 per cent or more in volume.
 - Q. Do you know of the Canadian Pharmaceutical Journal?—A. Yes, sir.
- Q. Is it associated with your organization in any way?—A. Yes, we publish it.
 - Q. I see in an issue dated November 1, 1951 this item:

"From the time the speech from the throne was published and the newspaper stories started to appear, every druggist in Canada could see the disastrous results of any legislation for him: over 60% of his volume is done on price maintained products."

So, over 60 per cent of his volume is done on price maintained products?—A. I said 50 per cent, the article says 60 per cent. My figure was close. I have not any figures before me.

Q. To give an idea of the widespread instances of the practice, on page 4 of your brief you say this:

"It is our contention that the principle of resale price maintenance is so woven into the fabric of our economy that any move to declare

the practice illegal should not be made hastily, nor without scientific investigation."

Is that correct?—A. That is correct.

- Q. You have already stated in your opening address what the purpose of this system was: it was to safeguard the dealer, as you put it, against unfair practices by large operators?—A. Yes.
- Q. And the protection of the manufacturer, then, would be a basic purpose in putting this practice into force?—A. Yes.
- Q. As well as the dealer? Well, if the practice is put into force to meet unfair competition and unfair practices, and if these practices should be corrected what would be your judgment on this point? In the interest of all the people in Canada, who should correct the bad conditions, the trade or the parliament of the people?—A. Well, I am a Canadian citizen and I believe in democracy, so I naturally believe in the government, but I might supplement that remark by saying that it would be a good thing if the government set up a fair trade board, so if the government or the consumer felt there was an unusually high price, or an unfair high price, then that consumer or government official could bring it to the attention of this board that we would set up, and that would be a very fine way of establishing the running of the minimum price Act.
- Q. Then, do you agree with my basic idea that if there are bad practices, or bad conditions, the remedy should not be in the hands of the trade itself? Do you agree with that basic idea?—A. Yes, I think I will agree, because, as I said before, I believe in our way of life. The government are the people, after all.
- Q. Now you have told the committee you have a board of commercial interests which operates in your association. What is the function of that board?—A. The function of the board of commercial interests is to try to teach our members to be up-to-date merchandisers as well as up-to-date operators, to have their stores clean and up to date, in fact to be modern; to teach them modern merchandising methods so they will be in a better position to compete with all and sundry, particularly at the moment when the chain food stores are starting to handle a lot of drug store products; we are trying to teach our druggists that if they are going to compete they must compete on a very modern and up-to-date basis.
- Q. I notice you have not mentioned in that survey any interest in matters of price. Have they any interest in matters of price?—A. No, they have not.
 - Q. No?-A. No.
- Q. Have they taken any part in seeking higher margins for the dealers?

 —A. No, not as a board.
- Q. Not as a board. Why do you qualify the answer?—A. Well, only in the case of a product which came on the market that showed a negligible, a very small, not a livable gross, they might suggest to the manufacturer that if he expects to enlist the co-operation of the retailer he had better give him a living profit.
- Q. Probably I am attributing my thoughts to the wrong committee within your organization. What about the Canadian Pharmaceutical Council? What is it composed of?—A. The Pharmaceutical Association Council is composed of members from each provincial statutory body. They are appointed by the provincial statutory body.
 - Q. Has that council anything to do with prices?—A. No.
- Q. I see an article in the "Western Druggist" of August, 1950, and I want you to tell me if you agree with it, or not. It speaks of the appointment by

the Canadian Pharmaceutical Council of an advisory merchandising committee to the executive manager as proving to be a very wise move.

"The appointment by the C.Ph.A. Council, while in session in Saskatoon last August, of an advisory merchandising committee to the Executive Manager of the B.C.I. has proven to be a very wise move."

And it goes on to say:

"The increased profit margin on Minards Liniment and Bromo Seltzer which are being announced or have been announced this very month are concrete examples of direct financial benefit to our members and demonstrates the effectiveness of the work of the B.C.I."

What is the B.C.I.?—A. Board of Commercial Interests.

Q. Shall I read that to you again:

"The increased profit margin on Minards Liniment and Bromo Seltzer which are being announced or have been announced this very month are concrete examples of direct financial benefit to our members and demonstrates the effectiveness of the work of the B.C.I."

Is that consistent with what you told the committee?—A. Yes. I told you if they do not give a fair living profit we suggest to them that they up the gross.

Q. I thought you said a few minutes ago that the Board of Commercial Interests has no interest in price structure?—A. They have no interest in price structure.

Q. Or price margins, you told me that.—A. No, I did not say that. I said

a minute ago they had.

Q. I did not understand because when I asked you to describe the activities of this committee you mentioned everything except price, I think.—A. I think I answered your question.

Q. Is it correct that one of the activities of this association is to up the

margins of profit to the dealer?—A. No, I would not say that.

Q. Well, then, how do you account for this item I have read to you?—A. Except if the manufacturer does not give a living profit, we think that he would be wise, in order to get the co-operation of the dealer, to give a living profit.

Q. We have a concrete example of this illustrated in this article. Is the article correct? Has the B.C.I. anything to do with these profit mark-ups?

Mr. MacInnis: We may yet hear of trade unions which are not interested in wages!

By Mr. Phelan:

Q. Are increased margins reflected in the price to the consumer?—A. Yes, their price would be advanced.

Q. They are reflected in the price to the consumer. So we have got that far.—A. Not in every case. Sometimes the manufacturer would reduce his price instead of upping the price to the consumer.

Q. I have some further publicity here that you may identify. The Canadian

Pharmaceutical Journal is your publication?—A. That is right.

Q. Issue of September 15, 1951. There is an item here which is headed:

"Handling complaints of price cutting. Case No. 1 was a complaint from the Saskatchewan Retail Druggists Assn. against a retail drug firm in Winnipeg selling direct to physicians in Saskatchewan, at the same discount given to the retail drug trade. This complaint involved one manufacturer's line, and the manner of selling to physicians was contrary to company policy.

"We obtained full co-operation from the manufacturer in correcting this situation. We also, while in Winnipeg, took the complaint up with the retail drug company concerned, and obtained assurance that grounds for complaint would not again occur."

Is that a correct report of that particular activity?—A. I do not remember

Q. Well, it is not so long ago; it is during your period as secetary-manager, September, 1951. Would you question the accuracy of this report at all, or the report of the activity?—A. If it is in our journal I would not question it.

Q. So, we may assume, then, it is correct?—A. Yes.

Q. All right, then. That is case No. 1.

"Case No. 2, from the Manitoba Retail Druggists Association in regard to retail outlets in Winnipeg, one of which was a large drug outlet, not bringing prices into line with the new suggested minimum prices. The Manitoba Retail Druggists Association worked diligently on this problem, principally locally. We co-operated with them by promptly contacting manufacturers whose lines were involved.

"We have on file letters from the manufacturers we wrote, assuring us they have been successful in having up-to-date minimum prices established in Winnipeg on their lines. Mr. Howard Brown, no doubt, can inform us if these statements by manufacturers are correct."

Does that correctly report the occurrence within your knowledge?—A. Yes, and I can supplement those remarks. Under price maintenance—it is a violation and that is why we object to it.

Q. That is why you object to it?—A. They were selling some things below

minimum prices.

Q. You are taking common association practice to keep prices up to the minimum?—A. We are referring it—

Q. I say were you?—A. No, we were referring it to the manufacturer.

Q. Not only referring it to the manufacturer but you were bringing important pressure to bear upon the manufacturer?—A. No, we were asking him—

Q. You were asking him?—A. We were drawing it to his attention.

Q. It was the voice of 4,200 members asking him?—A. Yes.

Q. That would be quite a volume of requests on this poor manufacturer?—A. It was the manufacturer who set the prices in the first place.

- Q. All right, the manufacturer set it in the first place but he is under pressure to unset it?—A. No, if he does not want to we would not do anything about it except draw it to his attention.
- Q. Except what?—A. Draw to his attention the fact that somebody had been selling below his price.
- Q. You were drawing it to his attention forcibly. Did he correct the situation?—A. I do not remember the particular case.
- Q. You would probably know it if he had not corrected it? What would be your conclusion—that he corrected the situation as a result of your common voices?—A. I would think so, yes.
 - Q. Here is case number 3, which is of a somewhat different type.

"Case No. 3 was a complaint from Associated Pharmacies, Saint John, N.B., against the Nestle's Food Co. who have no policy of price stabilization and allow Lactogen to be sold through mail order catelogues and mail order offices at very reduced prices.

"We have had three interviews with Mr. Grout of the Nestles Co. He will not agree so far to stabilize retail prices on Lactogen. The best we have been able to obtain from him is a promise they will do their best to have mail order catalogue prices advanced to regular prices."

Here is the case where the common voice of 4,200 members is bringing pressure upon a manufacturer to join the resale price maintenance group?—A. I

would not say that is pressure at all.

Q. Well the object of the interview then, the object of the suggestion is to have him join the resale price maintenance group—a man who is outside of resale price maintenance?—A. I do not think there is any pressure there. They may have suggested to him that it would be in his interests.

Q. To do what? In his interests to do what? To come into the resale

price maintenance group?—A. That is right.

Q. Into the resale price maintenance group?—A. That is right.

Q. Well, let me see if there are some more. Here is the Western Druggist. We have had that publication before. It was identified. This is for July of 1947.

The CHAIRMAN: I do not think we have identified the Western Druggist. Mr. Phelan: Yes, the Western Druggist was the first one I mentioned.

By Mr. Phelan:

Q. What about the Western Druggist? What connection has it with your association?—A. Well, it has not anything to do with our association. It is a trade paper. It covers the four western provinces—but officially it has not anything to do with our association.

Q. It is fairly accurate in its reports of your activities?-A. I would

expect it to be.

Q. Because we have already dealt with that one activity in the western provinces and that was the case in 1950 where we find the B.C.I. is taking some steps to get an increase in the margin of profit. I have already read that to you?—A. That is right.

Q. We have another one. This is for July 1947 and let me see what this is. It says "second session". It is apparently a report of a meeting of some

association. Which would it be-in July of 1949?

The manager stated that he had previously protested about catalogues. He said that this had been brought to the attention of the Canadian association.

Would this be the manager of — — A. Of the British Columbia association.

Q. British Columbia, I see.—A. Or some western association.

Q. The British Columbia manager reports that:

Following a discussion of a resolution of a previous meeting the council had contacted the Canadian Pharmaceutical Association on the desire expressed in British Columbia to secure a uniform 40 per cent discount on drug lines.

Now, what do you know about negotiations between you and the British Columbia branch to secure a uniform 40 per cent discount on drug lines?—A.

Well, there was no co-operation between the two.

Q. I will just put the question a little bit differently. He says that the reports in regard to the desire expressed in British Columbia-no-he said: that the association had contacted the Canadian association in regard to the desire expressed to secure a uniform 40 per cent—now what was the contact? Tell us about it? You are the secretary-manager and you would know about it? —A. The British Columbia association members, I would think, had a meeting and some of them suggested we should get 40 per cent on drug products.

Q. Yes?—A. So the manager there, I presume, is writing a letter to us to

suggest-

Q. No, he is not.——A. —that some of their members suggested that they needed 40 per cent.

Q. No, it is a little different from that. He reports that he has contacted

your association?—A. Yes, written our association.

Q. Well, maybe "written". Now, what action did your association take in that matter, if you know?—A. Well, I do not remember 1947. Again I say that in discussing new products that come on the market we urge the manufacturer to give our members a living mark-up.

Q. Mr. Preston, will you please direct your mind to my question. Have

you any knowledge or recollection of this contract?-A. No.

Q. Have you no knowledge of your association co-operating with the Manitoba association to get this result?

The CHAIRMAN: The British Columbia association.

By Mr. Phelan:

Q. —with the British Columbia association to get these results? Have you

any recollection of that?—A. No, I have not.

Q. Let us read the rest of the statement: "After extensive discussion it was regularly moved and seconded that the British Columbia Pharmaceutical Association and the Canadian Pharmaceutical Association continue efforts to secure a minimum of 40 per cent discount on all pharmaceuticals and also to urge the manufacturers to eliminate dual price policy".

Does that bring anything to your memory?—A. We have always urged

pharmaceutical manufacturers to give us a living profit.

Q. That does not anwser the specific question, you know-"efforts to secure a minimum of 40 per cent discount—". Did you co-operate in that effort as an association?—A. Yes, as an association.

By Mr. Thatcher:

Q. Is that 40 per cent of selling price?—A. 40 per cent of selling.

Q. 662 per cent on cost?—A. All my answers are on selling price.

By Mr. Phelan:

Q. Then, I have in my hand the Western Druggist for October of 1950. There was a meeting at St. John, was it the provincial association or the Canadian association?—A. We had our convention in St. John in September of 1950.

Q. In 1950. This is a report of the St. John Convention of 1950:

Among other important resolutions passed was one calling on the board of commercial interests-

I think we have met the board before, have we not?—A. That is right.

Q. "Calling on the board of commercial interests to contact all manufacturers for an upward revision of gross profits, and another instructed the B.C.I. to seek an upward revision of gross percentage profits on cosmetics and patent medicines."

Does that faithfully report one of the activities of your convention at that meeting?—A. Yes and once again I say we want a living profit.

Q. Please, please, does that faithfully report—.—A. Yes it does.

Mr. Fulton: He had already said yes.

By Mr. Phelan:

- Q. Then, in the Canadian Pharmaceutical Journal of May, 1949—this is apparently an editorial as it is headed "From the Secretary's Desk"?-A. I wrote that.
 - Q. You wrote it?—A. If it is "From the Secretary's Desk".

Q. It is "From the Secretary's Desk". Let me read this:

"If in establishing a policy of distribution for his products a manufacturer or manufacturer's agent fails to provide an adequate margin of profit for the retail distributor, that manufacturer could hardly expect the retailer to be other than apathetic or disinterested in the sale of the product.—A. I believe that absolutely.

Q. "Again the manufacturer or distributor who has enjoyed the confidence and co-operation of the retail druggist, who in the first instance assisted him in marketing his product, suddenly forgets his first love and attempts to woo the affections and loyalty of another type of retail outlet he should not be surprised if the druggist questions not only the manufacturer's judgment but also the sincerity of his past promises and commitments. The natural thing for the retailer to do in such a situation is to remain loyal to the people, who by their actions, even more than their words remain loyal to him".

I take it you were speaking there not as an individual druggist but as secretary of an association of 4,200 druggists?—A. Right.

Q. That is correct.—A. That was written at the time of the—

Q. That was—

Mr. Fulton: I would be interested in hearing the witness complete the answer to the last question.

Mr. PHELAN: I beg your pardon?

The WITNESS: That was written at the time the large food chains started to sell what were formerly recognized as drug store products. That was written in defiance of that practice. We think, and I still think that if a manufacturer who had been selling his products to us and with whom we had been co-operating to sell direct to the consumer—and giving him a lot of co-operation—decides to leave us and go to the food chain, being a third generation Canadian I believe I have the right to stop selling his product. If he wants to go to the food chain, let him go, but I am not going to sell his product.

That is the reason that article was written. That is a fighting speech.

By Mr. Phelan:

- Q. I am more concerned in the association activity than I am in the views of an individual.—A. Yes, but I say that in that editorial I was trying to arouse our members to do what I would do as an individual.
- Q. And I see you are telling the manufacturer here, on behalf of the association: "that it is only ordinary common good sense for him to purchase his supplies from the manufacturer who by his policy says that he is eager and anxious to secure the druggist's good will and co-operation, as well as his business".—A. Yes, sir. And any red-blooded Canadian would do the same thing as I did there.

Hon. Mr. Garson: Especially if he had 4,000 others with him?

The WITNESS: Yes, sir, all good Canadians.

By Mr. Phelan:

Q. Now I notice just one or two more things, then I will be through with this matter. I have already taken more time than I intended.

Would I be wrong in suggesting, from these documents or papers that I have read, that there was an organized effort on the part of your association to keep prices up?—A. An organized effort on the part of our association to keep prices in line so we could make a fair margin of profit.

- Q. And if, in your opinion, it was necessary to make a fair margin of profit, the conclusion would be it was to keep prices up?-A. That is price maintenance.
 - Q. That is price maintenance?

Mr. THATCHER: To keep prices up?

Mr. Beaudry: No interjections.

The CHAIRMAN: You can repeat your answer if you think it was misunderstood.

The WITNESS: No.

By Mr. Beaudry:

Q. I am sorry, I did not quite catch your name, sir?—A. Preston.

Q. Mr. Preston, your association I would take it, and I will ask you and you can tell me yes or no, is a closed corporation like the Canadian Bar Association or the Canadian Medical Association, is it?—A. Yes, sir, I would presume so although I am not familiar with them.

Q. Well, I will explain that. The members of your association must have definite qualifications before they can ever become part of the trade which you represent as an association, or before they can become members of your association? Yes or no?—A. Graduate pharmacists.

- Q. Graduate pharmacists; and do you consider that the members of your association are salesmen of commodities or salesmen of services, or a combination of both?—A. A combination; service is what we stress.
- Q. Service is what you stress; and therefore, when we deal with a druggist or with a group of druggists, this committee should, in your opinion, or should it not, consider or treat your profession as a combination of sales and services, the sale of commodities?—A. Well, if you want to consider retail pharmacists, you must consider them both as professional men and as merchants, because they are both.
- Q. Thank you.—A. It is very difficult to strike a line of demarcation between the services, where the professional services end and the commercial services begin. You see, they run into each other.
- Q. Is the position of the average retail druggist any different from that of a doctor, especially a country doctor, who sells or re-sells pharmaceuticals?—A. No. not a bit.
- Q. If counsel would be kind enough to hand me the quotations he used, I would appreciate it.

Mr. Phelan: I am sorry, but the reporter has just carried them away. However, I will get them back for you.

The CHAIRMAN: On this matter, in attempting to be fair, I hope that members will realize there are many who wish to speak. I have a list of 7 members already. So perhaps they will not ask all their questions in the first instance but might perhaps ask a few and then return to them later on.

Mr. BEAUDRY: Yes, Mr. Chairman, but I wonder if you would permit me to establish a point?

The CHAIRMAN: Surely.

By Mr. Beaudry:

Q. You have quoted your sources of income from various categories of goods. I wonder if you would be kind enough to tell this committee how you break down the various denominations of products which you normally sell in a drug store. I assume that you would break them down as between cosmetics, proprieties, prescriptions, the news stand, tobacco, chocolates, beauty preparations, and various kinds of patent medicines. Some of these might be included perhaps under one heading according to your own trade terms. So I wonder if you would be good enough to list them for us.—A. I would say, prescriptions; toilet goods, that is cosmetics.

Q. Do you call them cosmetics or toilet goods?—A. Cosmetics; that includes tooth paste, hair preparations, beauty aids, and things in that line; and then there are patent medicines. Some stores do a big business in Kodak supplies. That would be included under sundries. Kodaks, sick room supplies; that is another item. Sundries, that would include such things as the news stand, "pop", and newspapers.

Q. Under what category would soaps come?—A. They would come under cosmetics.

Q. And proprieties, have you not overlooked them?—A. Proprieties, I think that would mean patents and proprieties; they would come together. You see, it is the Patent and Propriety Medicine Act.

Q. In all these lines, would you tell us if all goods are price maintained, or if in each one of these lines some goods are price maintained and others are not?—A. Some are, and some are not.

Q. Is that a general answer covering all lines, or to put it more exactly, for instance, in a news stand, newspapers and magazines would obviously all be price maintained, would they not?—A. That is right, they would be all price maintained.

Q. And would chocolates come under the same heading and be all price maintained?—A. No. The chocolates which are price maintained would be those which are manufactured by recognized large manufacturers.

Q. Without trying to put an answer on your lips, will you tell me please if any of these lines—if in almost every case there is a category of price maintained goods and another category of not price maintained goods?—A. Yes, in all of them.

Q. You say in all of them. Is that a true statement?—A. Yes, that is quite true.

Q. Please tell us if the people who call at your store to sell their wares or goods to you—let me be more specific: do the people who call on you break themselves up between manufacturers or direct manufacturers' representatives, and jobbers who would represent not one manufacturer, but who would have on hand goods of many manufacturers? Give me an answer to the first one. Do you have direct manufacturers' representatives or salesmen calling on you to sell?—A. Yes sir.

Q. And do you have jobbers calling on you to sell goods which are manufactured by various manufacturers?—A. Yes.

Q. Is there a third, or are there more categories of salesmen calling on you?—A. There is the pharmaceutical manufacturer, the drug man; and then there is the wholesale distributor; that would be only two; the manufacturer drug representative, and the distributor of many lines.

Q. And the difference between them would be that in one case one man comes in selling only one brand of wares?—A. One firm's products.

Q. While another man comes in selling the products of a great many firms?
-A. That is right.

Q. You have stated that in all commodities classified generally under the headings we have already mentioned, there are price maintained and not price maintained goods?—A. Yes.

Q. You have listed the margins or the percentage of products in appendix 2 of your brief on price maintained goods. Would you care to tell the committee the percentage of profits on some of the goods on which price is not maintained? And I would prefer it if you would give us some definite instances?—A. Would you mind repeating your question? I was trying to think of an answer and I forgot the question.

Q. You have stated under the heading of cosmetics: you have two types of goods for sale, one in which the prices are maintained, or groups of goods, and another group in which prices are not maintained by the manufacturer at the retail level. You have stated in this brief, in appendix 2, the margin or percentage of profit on the price-maintained goods. Now, would you care to tell me what are the margins of profit on some goods that are not subject to price maintenance by the manufacturer at retail levels, and tell me what these margins are, and the goods on which the margin is applied?—A. There are some goods, of course—that is an answer to the consumer; there are some goods which are not price maintained, and on which the margin is higher than it is on price maintained goods, because it is the only way you can balance over, in order to get an overall picture, a general profit picture.

Q. Would you then say that on all goods, or generally speaking—I won't restrict you to "all", but that broadly speaking, on goods where re-sale price is not maintained, the margin or gross profit to the retailer is higher than it is

in the case of price maintained goods?—A. Yes, sometimes it could be.

Q. Let us not say: "it could be".

The CHAIRMAN: Let the witness finish his answer, please.

The WITNESS: I would say generally that the price could be higher, much higher.

By Mr. Beaudry:

Q. What does that word "could" mean?—A. The leader can set his own price.

Q. I quite appreciate that.—A. And if he can take it that his mark-up

could stand a good price, he would put it up high.

Q. But I asked you if, in your experience as general manager and secretary of your association, it is to your knowledge that the price of goods on which price maintenance is not exacted by the manufacturer to the retailer is higher than it is on price maintained goods?—A. Yes; as association secretary I do not know; but when I was in business, I would say definitely, yes, that the price is higher on things, on maintained items.

Q. Therefore, you would logically answer my next question which is: which are more profitable, price maintained or non price maintained goods?—A. Non

price maintained goods.

Q. My question is: which is more profitable?

Mr. Fleming: Profitable to whom?

Mr. Beaudry: Profitable to the retailer, naturally.

The CHAIRMAN: You have answered yes.

The WITNESS: In two different classes, is that what you mean? Mr. BEAUDRY: I think I have had my answer, Mr. Chairman.

The CHAIRMAN: Now, Mr. Hees.

Mr. BEAUDRY: But I am not finished yet, Mr. Chairman.

The CHAIRMAN: You have been questioning for 15 minutes now, and I think you have repeated questions which were asked by counsel upon four or five occasions. I think we might come back to you after we have had a round of the members.

Mr. Beaudry: Although I defer to your wishes, let me say that I appreciate that it takes a lot of time. Our counsel has been trying to establish a line of thought from a series of answers. I am humbly submitting that some answers or further questions to those same answers might crystallize a different type of thought, or bring out a different set of facts. I do not think we can say in fairness to the witness or in fairness to the people of the country who are

interested in finding out what is what about this, that we are going to let the element of time enter into the question as to whether one side should be presented and not the other side.

The CHAIRMAN: I entirely agree, but please remember that we have 36 members here, all of whom can raise points. So I think that a member should, if he cares to, raise one point in opening, and then retire, and then return to his questions at a later time. Therefore, I shall return to you, Mr. Beaudry, after other members of the committee have made their points and I hope they will set a good example by being brief and concise.

Mr. BEAUDRY: I yield to your judgment, Mr. Chairman.

The CHAIRMAN: Now, Mr. Hees.

By Mr. Hees:

Q. I understand that in your opening remarks, Mr. Preston, you said that the principal enemy of the small retailer is the loss-leader, and that the only defense which the small retailer has against the loss-leader is retail price maintenance.—A. Yes.

Q. If the loss-leader were eliminated, would I be right in saying that the principal advantage which the large retailer has over the small retailer would then be removed?—A. Yes sir.

Q. Then, at what margin of profit does an article being offered for sale cease to be an article selling at a fair competitive price and become a loss-leader?—A. Of course, that is a big question. It all depends on the terms. Do you want me to answer what a loss-leader is, or do you want to establish what

a loss-leader is and then ask me my opinion.

- Q. I would like to know what a loss-leader is and I think any such answer should indicate the margin of profit or lack of profit at which an article becomes a loss-leader. It is a term which has been used a great deal.—A. In practice in the retail drug business, a loss-leader is only a loss-leader when it is sold below cost. Loss means loss. It can't mean profit. It is a leader which he sells at a loss. And the difficulty is that the larger operator buys for less than the small operator, often as much as 10 per cent less. He buys in tremendous quantities. Let us say an article was supposed to sell for \$1.00 and the independent sold that as a loss-leader for 99 cents, he would be losing one cent; but the large operator can buy that for 10 less; he would get it for 90 cents and he might sell it for 89 cents, which would mean that he would be selling it for 10 cents less than the independent, but he would be only losing one cent. He would beat the independent by 10 cents.
- Q. Well then, I take it you consider it a loss-leader if you sell it below the price at which it was laid down in your store?—A. Right, that is a loss-leader.
- Q. Without taking into consideration your overhead or your margin of profits and that sort of thing?—A. No. That is right. The loss-leader in the drug business has been a thing sold at crazy prices. For example, I have sold Baby's Own Soap which sold normally for 10 cents, and when we opened our stores we sold it at 1 cent—we started off at 5 cents and the independent druggist thought he could beat us and he cut the price to 4 cents; then we brought it down to 3 cents and he sold it at 2 cents, and, finally, we sold it at 1 cent, and we did that—I say "we", I mean the chain store—"we" put that independent druggist right out of business, and he was a good solid citizen, a member of the city council in the city of Toronto. That is loss-leader.

Q. Well then, do I take it that in your opinion the important thing to protect the small retailer would be a law prohibiting loss-leaders?—A. That is the curse of merchandising, when you do not have price maintenance.

Q. Then, Mr. Preston, if a law were brought in prohibiting dealers from selling goods below the cost at which they are laid down in the selling establishment, would it be necessary to have resale price maintenance at all; would that contribute to the continuance in business of the small man if that were removed?—A. Well, you are just begging the question.

Q. No, it is a very honest question.—A. If you establish legislation you would not have to pay minimum prices—if you establish prices on a product to prevent it from being sold as a loss-leader, wouldn't that be a minimum

price?

The CHAIRMAN: I think in fairness we should go back to Mr. Hees' earlier question on this matter of prices on loss-leaders. You made a reference to a fair margin of profit.

The Witness: Well, I don't quite appreciate everybody laughing at this.

The Chairman: May I assure you that no reflection was intended on yourself, sir. They were laughing about something else.

The WITNESS: That is fine, when we can laugh at each other.

Mr. HEES: At times we are a very informal group.

By Mr. Hees:

Q. What would be your answer to that, do you suggest some sort of a board?—A. The answer to that, I think, is, as we suggest in the brief, a board. I think that if you had a board through which you could establish fair prices the independent druggist should be satisfied. If you could say that certain loss-leaders, or certain prices are, say fair prices—I think that is the answer.

Q. In other words, such a board would say what is a fair average margin, or price, below which it would be illegal to sell?—A. Yes, keeping the consumer and distributor in mind, both; keeping the druggist in mind and keeping the consumer in mind; a competent board which would arrive at a fair price.

The CHAIRMAN: Mr. Thatcher, you are next.

Mr. HEES: Thank you, very much.

By Mr. Thatcher:

Q. I was interested in one answer you made to Mr. Beaudry. You said that generally speaking your mark-ups on non-price maintained articles were higher than they were on priced-maintained merchandise. That is a correct statement, that is what you said?—A. Generally speaking, I said it could be.

Q. You said that the mark-up was higher. Could the committee not take it from that answer that if price maintenance was taken off in the drug business, prices would go up?—A. Prices on non-maintained items would go up, certainly, because you have got to make a living and if you don't get it on price maintained articles then you are going to get it on articles on which the price is not maintained. If you lose on the bananas you get it on the grapes.

Q. And if it goes up why are you concerned with the government taking price maintenance off? You would be better off.—A. No, no; the consumer would

not know what he was paying for stuff.

Q. You are just worrying about the consumer; you are not worrying about your own business?—A. We worry about both. We have to make a living; and, more than that, we are there to give a service. We are a community institution. I do not think there is any group of men in Canada who have a greater degree of respect from the community than the druggists. I don't know of any individual in the community who is better thought of. When I was in business in Toronto, I was certainly interested in my customers; and, I am sure, that they knew I was not gouging them on my prices, whether

they were minimum prices or not; because, for one thing, I was not driving a Cadillac car, so they knew that I was not making a lot of money; certainly not in the way a fellow would who could retire with a couple of hundred thousand in the bank.

Q. If I understood you correctly, you said that the abolition of resale price maintenance was not going to hurt the retail druggist as far as price is concerned—did you say that?—A. I did not say that, the abolition of price

maintenance will ruin the independent druggist.

- Q. All right, I will leave it at that, then. You make the statement on page 9 of your brief: "If the government makes price maintenance illegal it would be, in effect, passing discriminatory legislation; legislative for the benefit of the larger operator and to the detriment of the small". I wonder if you would care to enlarge on that statement.—A. Well, the large operator could take in any number of price maintained items that he might want to and price them on a low level. In Toronto in the old days we had the chain store operator and the department store operator taking certain loss-leaders, and they had a monopoly on those items, nobody else sold them because they sold them at such ridiculously low prices that the public went to them and to them only to buy.
- Q. Who do you mean by large operators?—A. The department and chain stores, and now the food chain store operators. We have never had that experience yet with price maintenance, but I can visualize this situation, that if the department stores started to cut prices on nationally advertised articles that the chain food stores would be in there fast.

Q. And you contend that some small retailers would be put out of business

if such a practice developed?—A. That is right.

Q. I can't follow your argument, particularly in view of what is happening with the grocery stores. In the grocery business there is no resale price maintenance, yet you have hundreds of grocery stores all over the country doing a good business.—A. Well, sir, we have a personal example here, I will ask Professor Fuller to answer that for you.

Professor Fuller: Mr. Chairman, I would like to answer that in this way. I was in business in Brantford some years ago—

Mr. Fulton: For the record, could we have some particulars about Professor Fuller, please? Would you qualify him, please?

The WITNESS: Professor Fuller is head of the pharmaceutical administration division of the Ontario College of Pharmacy. He is a graduate of the Ontario College of Pharmacy. Some years ago he was in business for himself. He is professor of pharmaceutical administration at the Ontario College of

Pharmacy.

Professor Fuller: In 1923 to 1927 I was in the retail drug business in the city of Brantford, Ontario. I was doing very well until the big chain stores came and opened up just around the corner from where I was, in June of 1927. They opened up on the main street and I was near the corner at 191 Colborne Street, and the immediate result was that I was forced out of business. I had the sheriff, the bailiff, and the representative of the referee in bankruptcy all in the store at the same time. I just could not meet the competition put up by these big chain operators.

Mr. Thatcher: And the result of that was that you went out of business? Professor Fuller: Absolutely.

By Mr. Thatcher:

Q. Out of the 4,200 druggists in your organization can you tell us how many of them would be in the small rural towns?—A. Quite a number—I do not know. In British Columbia there are about 400 druggists. Saskatchewan

has the most smaller towns, of course—and about 350 druggists, I think, in Alberta, 350 in Saskatchewan, about the same number in Manitoba, 2,100 some odd in Ontario, 600 in Quebec. I think New Brunswick has about 175, Nova Scotia a few more, and Prince Edward Island 28.

Q. Now, who would put them out of business? They have no competition. In a small town there is only one druggist. —A. The mail order house, which is the same thing—the mail order house and the department store would be

the same competition as that of a large store in an urban centre.

Q. You said a moment ago in answer to Mr. Phelan, I think, that your association approached the manufacturer in some cases to get him to change his price structure. Did you ever approach the manufacturer of some drug

product and ask him not to sell to, say, food stores?—A. Yes, we did.

Q. In other words, you try to maintain prices and you also try to restrict your competition from other lines of business?—A. Well, you have, for instance, the article—I do not like to name these goods because it goes in the paper, doesn't it? I do not think it is good business to mention a product; let us say a product but if I was to mention the name you would all be familiar with it.

By Mr. Fulton:

Q. Can you give us the category—is it a food?—A. No, effervescent salts, which a great many men take. Now, what was the question I was going to try to answer by this illustration?

By Mr. Thatcher:

Q. I asked you if your association goes to a manufacturer and asks him not to sell to a food store.—A. About the food store, yes. Well, we do not think that a food store is a proper place to sell an effervescent product. We think the drug store is the place to sell that.

Q. Isn't that practice bound to send up prices? When this product goes to the food store they are likely to sell it at a lower price?—A. No, the food store would sell that product that—I have in mind, of course, a price

maintained product, and they won't sell it any cheaper.

Q. One other question, Mr. Preston. You have no written contracts between manufacturers for price resale maintenance. I wonder if you would amplify your statement to Mr. Phelan on the kind of sanctions you have if someone breaks fixed prices?—A. We have not any sanctions at all; we are a retail organization. It is the manufacturer that has sanctions.

Q. What kind of sanctions do they apply?—A. They stop selling to men and I quote the case in the newspaper now, the case of the Montreal Pharmacy,

Charles Duquette against Charles E. Frosst.

Q. Would a manufacturer in a case like that stop selling him all their products?—A. The manufacturer in this particular case only stopped selling the one product.

Q. You do not think other manufacturers stopped selling him their products?—A. No, that was established in the P.A.T.A., and that was the trouble with the P.A.T.A. Now, of course, it is vertical price maintenance. In that case, Duquette vs. Frosst, it did not make any difference what other products Duquette may have cut—Messrs. Charles E. Frosst did not interfere.

Q. I cannot reconcile that answer with the report of the Frosst case which

I have in my hand. It says:

"The Frosst Company have refused to deliver the merchandise because the Montreal Pharmacy had sold identical products."

Not their products—"identical products at a price lower than that fixed by the Frosst Company to the public." Now, is not that pretty stringent?—A. I do not think you are reading it properly.

Mr. BEAUDRY: Is that a judgment?

Mr. THATCHER: No, the Canadian Press story.

Mr. Beaudry: I do not think we should take that as an authority.

The Witness: I can tell you that the Charles E. Frosst Company—Mr. Duquette cut the price drastically on a preparation. I think it was the well known Frosst 217 tablets. I am not quite sure, but I think that was it.

Mr. Beaudry: Mr. Chairman, on a point of order, please. As this case has come up fairly frequently and may come up again, instead of getting expressions of opinion from either members of the committee or witnesses would it not be proper to ask our counsel to secure a copy of the judgment and the declaration?

Mr. PHELAN: Mr. Chairman, I have it and as soon as it is translated I will have it distributed.

By Mr. Thatcher:

Q. Mr. Preston, a lot of Canadians have found it strange that American drug prices on some of these resale price maintained products are much lower than Canadian prices. For instance, in your brief in one place, I think on Bayer aspirin, Appendix 2, they are 79 cents per 100 in Canada. Then on page 15 of the third appendix it says Bayer is 59 cents on the resale price maintenance in the United States. Could you give the committee any reason why there would be those differences in price?—A. I cannot because the price again is set by the manufacturer. He says that the resale price is to be 79 cents. I do not know how he bases that or upon what. I cannot give an intelligent answer.

By Mr. Fulton:

- Q. Mr. Chairman, I would like to ask Mr. Preston a question arising out of page 7 of the brief where you state just near the middle of the page—"In the first place..."—A. That is the first part of the brief?
- Q. Yes, of the brief itself. Just near the middle of the page, in answer to your own question:

"Will the consumer lose if price maintenance becomes illegal?" You say: "In the first place, if the independent retail druggist could not depend on the revenue from the price maintained merchandise he sells the whole system of drug distribution would have to be curtailed."

Well, you have told us already, I think, that approximately 50 per cent of the volume, of your sales, that is dollar volume, is in price maintained lines so I take it there cannot be much quarrel with that as a statement. What I want to know is this: is not that statement only true if you assume that the ending of the price maintenance system would result in the disappearance from the shelves of all individual stores of these goods that are presently price-maintained, and why do you assume that?—A. Well, we assume that the minute the government were to legislate against price maintenance every article that is now price-maintained would become over night a loss-leader.

Q. It is on the basis of that assumption that you made the statement which I have read from page 7 of the brief?—A. Yes, and from experience of over thirty years in the drug business.

By the Chairman:

Q. Did you say "would" or "might"?—A. In my opinion "would"—every item that is now price-maintained would become a loss-leader tomorrow morning.

By Mr. Fulton:

Q. Mr. Preston, upon what experience is that opinion based? Is that based upon experience of the practice prior to price maintenance?—A. Yes.

Q. Would it be fair to point out that what you appear to be saying is that prior to the introduction of price maintenance all these articles, representing some 50 per cent or 60 per cent of your volume, were loss-leaders?—A. Yes, sir, and that is why it was very difficult to operate a retail drug store in the urban centres prior to price maintenance. It was almost impossible to make a fair living.

Q. Then have you any figures to show that there has been a substantial increase in the number of retail drug outlets following the introduction of the price mainteance system?—A. No, except somebody might say, "That is normal growth." I can say in 1939 we had about 3,500 members and now we have 4,236. Of course, we have now 5 million more people in Canada than

we had in 1939.

By the Chairman:

Q. Not 5 million.—A. 1939—what did we have—12 million? We have 3 million more.

Q. Roughly 2½ million.

By Mr. Fulton:

Q. And do you number pretty well every retail drug store as a member?

—A. Every drug store.

Q. Is membership voluntary?—A. No, it is not voluntary; it is based on this, as I said at the outset, our members are members of the provincial associations and by virtue of that fact they are members of our association.

- Q. Thank you. Then, have you any figures on record or if you have not can you give me just in your own judgment an answer to the question of whether there is a tendency at present towards an increasing number of chain drug stores—is the chain drug store growing, or is the independent individual drug store holding its own, or what is the situation?—A. I would say normal growth, I think. The largest chain store in Ontario has grown since 1935 from 50 stores until it now has 85 stores.
- Q. I think you told us that you estimated that of the volume of business approximately 25 per cent at present is done by chain and department stores. Is that a substantial increase in the volume of business over, say, the last ten years compared to the volume previously done by the chain and department stores, or has that figure remained relatively static?—A. I cannot answer that. Those figures were only guesswork on my part anyway.

Q. Have any of your associates here those figures?

Professor Fuller: Should I answer that?

The CHAIRMAN: Yes.

Professor Fuller: Chain store development has not increased in the last ten years. It came up to a saturation point and then sort of sloughed off. I apologize in the brief for using American figures but I am more familiar with them. There are approximately 8,000 fewer drug stores in the United States today than there were prior to the so-called fair trade laws, which is the name given to resale price maintenance in the United States. We do not want fair trade laws in Canada; we like our own system better because it is voluntary. Those figures are susceptible to other factors, however, because in 1932 the American Association of Colleges of Pharmacy went on a four-year basis, which requires four years of training for a pharmacist and they introduced business subjects into their curriculum for 10 per cent of the hours,

and that is what I have been engaged in in the United States for the last twenty-four years until August 1 of this year—teaching those business subjects.

As these students went out into business—better business men—they have conducted pharmacies much more efficiently than in the past, and that has been one reason for the reduction in drug stores, plus the fact that there was a war and there were fewer pharmacists being trained and so on and so forth, and also fewer pharmacists to operate under resale price maintenance and yet at the same time I think resale price maintenance has helped the pharmacists to be more efficient and the individual pharmacist now serves over 3,000 customers instead of the 2,200 that he used to. I think that is efficiency in marketing.

This is perhaps not the right way to approach this, but you have been saying a considerable amount about margins. Am I permitted to comment upon that?

Mr. Fulton: Well, it is not actually in my question.

By Mr. Fulton:

- Q. Well now, I want to be fair about this, but then does it not almost necessarily follow from the figures you have given that it is impossible actually to assert or to prove that resale price maintenance operates immediately in favour of the maintenance of the individual independent retailer and against the chain stores, in other words, you cannot prove by these figures that to keep the system of resale price maintenance in existence is the greatest guarantee that we have that there shall be independent retailers, and a larger proportion of the business done by them rather than by a smaller number of chain retailers?-A. In my opinion the answer is yes, that keeps the independent in business and helps him to compete with the concentration of economic power in the chains. He is at a disadvantage in that respect. I brought in the number of retail pharmacists in the United States as a reply to a statement in the original interim report by the MacQuarrie Committee, in which they asserted that resale price maintenance has protected the inefficient and would increase the number of distributive units which, as shown by the very statistical data that we have presented from several sources, is not so at all; but there are other factors of course which must be taken into consideration, to get at the number of retail outlets.
- Q. Then, your position is this, that although resale price maintenance has not increased the number of retail merchants, it has nevertheless guaranteed them continuity and security and ensured they would not all go under at the hands of the big chain and department stores. Is that correct?—A. That is correct. Your question is really tied up with that question of margin.

Q. I have another line of questioning to pursue, but I do not want to choke you off on margins.

The CHAIRMAN: I think it will come out very easily through some other witness.

By Mr. Fulton:

- Q. I have just two or three more questions at this point I want to ask. And first, following along the lines of an answer that was given to Mr. Hees, I am interested in this loss-leader matter. I think you have answered in some detail on loss-leaders, Mr. Preston, but we have had previous evidence to the effect that there is not much danger of the loss-leader practice under the present economic conditions. Do you agree with that, or what is your opinion?—A. There is not much chance of it?
- Q. It was said previously there's not much danger of the loss-leader practice growing up under present economic conditions, even if resale price maintenance is prohibited.—A. I understand it will be on our doorstep tomorrow morning.

Q. On what do you base that?—A. Keen competition. There is always somebody who thinks he can be smarter than the other fellow and get the business away, and it is generally the department store who will use that loss-leader to get the people into their stores. That is advertising. If you are going to advertise you have to advertise a bargain. You cannot fool the people all the time.

Q. You can some of the time, I suppose?—A. So you have to give them a bargain. The only bargain you can give them in the retail drug business

is to give them a cut-rate item.

Q. So you would say that the factors which led to the loss-leader practice in prior years are just as much present today as they were then. Is that your

answer?-A. Yes, sir.

Q. Apart from the Frosst case that we have discussed, have any of your members ever tried in the courts to have the contracts which they have entered into to maintain prices, declared void and not binding?—A. There was only one other case, and that is years ago, with the Wampole Company, and it was with the same Mr. Duquette. It was something of the same thing. That is the only other case I know of.

Q. What was the result, do you remember?—A. No result.

Q. In other words, the contract was held to be a binding and valid contract?—A. I do not think it was ever adjudicated upon.

The CHAIRMAN: Our counsel can perhaps get that information.

Mr. Beaudry: Was there a contract entered into, or was there just a tacit understanding?

Mr. Fulton: What I should like committee to get, then, is the answer to the question asked, whether Mr. Preston had any knowledge of other cases besides the Frosst case in which a contract to maintain prices had ever been before the courts in Canada, and if so, what was the result. Was the contract or arrangement held to be binding and valid, or otherwise?

The WITNESS: That was about 40 years ago.

By Mr. Fulton:

Q. Do you know whether the drug industry has ever been investigated under the Combines Investigation Act, apart from the P.A.T.A. matter?—A. I think they came under the Price Spreads investigation.

Q. That was a parliamentary inquiry, but I mean under the combines legislation has there ever been an investigation of the drug industry?—A. Not

that I know of.

By Mr. Dickey:

- Q. Mr. Preston, you, as I understand it, have had personal experience in the retail pharmacy business some years ago in a period when resale price maintenance was not quite so prevalent as it is at the present time. Is that correct?—A. Yes, I have been in the retail drug business since 1908.
- Q. And I understood you to say that conditions were chaotic in that period?

 —A. Yes, sir.
- Q. Would you care to expand those remarks just very briefly as to what you mean by chaotic?—A. Well, in those days when you opened up your store in the morning you might have goods on your shelves that had been selling for many years at a certain price. The newspaper would come out and you would find that a large chain or department store was selling that item that you had been selling, say, for 25 cents for maybe 20 years, that their price, as announced in the newspapers, was 13 cents or 2 for 25 cents. The result was you did not sell any of those goods. Now, multiply that by 50 and you have the results that obtained in Brantford where, as Mr. Fuller explained to you, the chain stores

fought among themselves and the independents sat by and looked out the windows and counted the customers on the sidewalk going to the chain stores.

Q. Yes, but was that a general situation or was it a situation that only arose in particular instances and in particular places?—A. In all urban centres that was a frequent practice; and then, of course, at the turn of the century we had the large mail order houses starting up and they have been growing uncreasingly ever since, until now, I understand, the mail order business is larger than their store business, and that would affect the rural firms.

Q. I understand your evidence to be that that kind of condition existed, one might say, almost throughout the drug trade and throughout Canada in all areas during that period.—A. In 1908, or previous to that, it was existing and was becoming very pronounced—when I was an apprentice—and it lasted till

1927 or 1928, when resale price maintenance began as a practice.

Q. As I understand, at the present time about 40 per cent of the trade in drug stores is not carried on under any system of resale price maintenance which you know of.—A. I think that would be a good figure.

Q. Now, do those conditions of chaos exist in that segment of the drug store business today?—A. No, there is not so much of that because none of those

items are nationally advertised.

Q. But those conditions do not exist in that segment of the drug store

business today nor have for the last few years?—A. No.

Q. One other point, Mr. Preston. As I understand it, the effect of resale price maintenance so far as the retailer is concerned is that it puts him in a position where he knows the mark-up that he can get on any particular product, and he knows that so long as he continues to sell that product at that price he will continue to get supplies of the product and will make what you term a living wage or a living return out of that particular product. Is that correct?

—A. I would say so.

Q. That is the importance of it from the point of view of the retailer?—

A. Yes, orderly marketing.

- Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only to change his percentage of mark-up which you are allowed, but to try to reduce his price to you. That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?—A. I cannot answer for the manufacturer. The manufacturer gets his price first.
- Q. Yes, but I am asking you about the tendency within the retail trade.—A. Perhaps Mr. Fuller could answer that question better than I.

Q. So far as I am concerned, I am just putting the question to the witness, and if one witness is prepared to answer, well, he may do so.

Mr. Fuller: On page 44 of the mimeographed brief, that is appendix I, I have attempted to show this diagrammatically. However, the typist did not locate the lines the way they were shown in the manuscript. Before fair trade, it shows consumer prices on the left and the retailer's costs on the left. In the original manuscript, after fair trade the lines on the right are much lower than the lines on the left and the spread may be greater in between. We have been talking about margins here. A manufacturer can reduce his price and there is definite evidence as to this, which I have documented in the brief to show that under resale price maintenance in the United States the manufacturers have reduced their prices to the retailer, giving him a larger margin of profit without increasing the price to the consumer. In fact, in some instances he has actually lowered them in order to get the co-operation of the retailer in pushing his goods, whereas before he did not have the co-operation. That is what I meant about margins. You can get a greater margin without increasing the price to the public by taking it out of the manufacturer. As I say, I

have not been in Canada except on vacation, and the 24 years of activity of the C. Ph. A. have been unknown to me except as I read their journal at times and I may have written an article for them, but similar retail associations all over the North American continent have said "we will get behind your goods and we will push it if you will give us a respectable margin and have an income from it, and you can do this by reducing your price to us, thereby giving us a better margin and we do not have to increase the price to the public". That was brought out in Grether's studies in 1929. I think I have documented it in the brief. It is at the middle of page 26, appendix 3. We can buy a pound of Epsom salts for about 10 cents a pound and put it up in quarter-pound packages of four ounces each. We would then get 40 cents by selling it at 10 cents a package, and that looks like a tremendous profit, but how often do you sell a package of Epsom salts? Maybe once a day or two or three times a week. Nobody is getting wealthy on that product. I do not think margins can be looked at in that way.

By Mr. Dickey:

Q. My question was really connected with the information brought out by Mr. Phelan's question, that there has been some action on the part of this association to try and influence the manufacturer, and I presume the dealer, to promote increased margins to the retailer. Do you think that if the competitive situation were such that the retailer found that he could not sell a particular product at a price higher than a dollar, and having to sell it at a dollar—giving him a 20 per cent margin of profit which he found was not sufficient—would he go to the manufacturer and say: Can you not reduce your price to me so that I can sell that article at a dollar and make a profit of 33½ per cent?

Mr. Preston: In practice, as I say, that does not happen.

By Mr. Dickey:

- Q. That does not happen, and I can quite understand the reason why it does not happen under a system of resale price maintenance, but would it not—A. It would not happen because the manufacturer can give you umpteen reasons right away why he cannot reduce the price. It never happens. The manufacturer is adamant in that situation.
- Q. Can he not give you umpteen reasons why you cannot increase your margin?—A. He can do that too.
- Q. But you have been successful in having the manufacturer increase your margin— —A. In a very few instances. The price has generally gone up if we increase our profit. He does not decrease his profit except in isolated instances.

The CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

- Q. Mr. Preston has indicated that his organization, the Canadian Pharmaceutical Association, represents 4,236 retail druggists in Canada. Is that correct?—A. That is right.
- Q. That represents all the retail druggists in Canada, I understand?—A. That is right.
- Q. You said that membership in the organization was not voluntary. In answer to Mr. Fulton, you said it was not voluntary—what did you mean by that?—A. Well, I have to go back. To begin with, our association was not an association of members, it was the coordinating body of the provincial statutory associations. The provincial statutory associations control pharmacy in each province. They are in charge of education, licensing and jurisdiction over

pharmacy completely. Now, as all druggists must be licensed, they become members of the provincial statutory body. By virtue of that fact they pay a per capita fee to our association for each one of their members. By virtue of the fact that the man is registered with the provincial statutory body he is a member of our association.

Q. His membership in your association is compulsory?—A. Right.

Q. The payment of fees is compulsory?—A. That is right, that is the licensing fee.

Q. Well, he is licensed provincially?—A. That is right.

Q. Have you any sanctions which you may impose against a druggist in the province who may not belong to your association?—A. Well, they all belong to our association.

The CHAIRMAN: Automatically.

Mr. Shaw: They all belong but are they on a voluntary basis?

Mr. Beaudry: Are they not in exactly the same position as doctors, or lawyers—

The CHAIRMAN: Automatically.

The WITNESS: Yes.

Mr. Beaudry: —who automatically become members of the Bar.

By Mr. Shaw:

Q. Mr. Preston has already indicated within the provinces that is true but I have asked him if it is also true that a man must become a member of your national association for the same reason?—A. No. Put it this way. He is a member of our association by virtue of the fact that his association pays us a fee for that member.

The CHAIRMAN: Automatically.

By Mr. Shaw:

Q. Ex officio?—A. Yes, that is right.

Q. Actually, repeating what you said, your association does embrace all druggists within Canada?—A. Yes, sir.

Q. Your fear, as you have indicated, is that certain members of your association will through their practice likely do great damage, if not destroy, the small retailer?—A. Yes, sir.

Q. Have you a code of ethics within your national organization?—A. Yes, we have an altruistic code.

Q. Do you the members of your national association subscribe to the code of ethics?—A. No more so than the majority of us practice christianity—although we all maintain we are christians.

Some Hon. MEMBERS: Oh, oh.

The CHAIRMAN: Order.

By Mr. Shaw:

Q. You have not enough faith in your organization to conclude that there are not some who will destroy others as a consequence of a practice? You feel you have members in your association who would do that?—A. Yes, sir.

Q. Then Mr. Preston, did your association, following the announcement by the government that legislation would likely be introduced, write your members urging them in turn to write members of parliament?—A. Yes, sir.

Q. Could you provide the committee with a copy of the letter you sent out?

—A. I think we could, sure.

Q. Fine, I would like to have that. Secondly, you have asserted that the loss leader is a danger if resale price maintenance is prohibited?—A. Yes, sir.

Q. You are familiar, I presume, with the policy of certain drug manufacturers as far as 1 cent sales are concerned?—A. Yes, sir.

Q. Do all druggists practice that?—A. No, sir.

Q. All drug manufacturers, I mean?—A. No, sir.

Q. Would you call it an unfair practice, or something akin to the loss leader, where some drug manufacturers follow that policy?—A. What is that question again?

Q. Some drug manufacturers have a policy which, carried to the ultimate, is known as the 1 cent sale? Two for the price of one, plus 1 cent?—A. Yes,

that is right.

Q. You indicate that not all drug manufacturers practice that?—A. That is on a trade branded line. That 1 cent sale is only on the manufacturer's own products.

Mr. Stuart: On a point of order, is that statement correct—that they do not sell other than their own manufactures—other than what that manufacturer makes?

The Chairman: Perhaps you could ask that question later, Mr. Stuart, you are next on the list.

By Mr. Shaw:

Q. Would you agree that in effect that is a loss leader?—A. Yes, it is a loss leader, but it is not for advertising purposes. It is not in the same category.

Q. They are all done for advertising purposes, to draw customers in and

to sell them something else?—A. Yes.

- Q. Do you condone that practice?—A. Personally, no. In our association we do not condone it but we do nothing about it. That is the manufacturer's business.
- Q. But you have never seen fit to take any action to correct it?—A. No, we would not do that.
- Q. Yet you feel so strongly, as far as loss leaders are concerned?—A. Yes, but this is a manufacturer—

Mr. BEAUDRY: On a point of order, Mr. Chairman.

Mr. Shaw: What is the point of order?

The CHAIRMAN: Let Mr. Beaudry state it.

Mr. Beaudry: Would Mr. Shaw like to establish from the witness whether that 1 cent sale represents a loss leader to the retailer, or only represents it to the manufacturer? I think there is quite a difference there?

By Mr. Shaw:

- Q. Well, whether it represents a loss to the manufacturer or a loss to the retailer, it is still in principle a loss leader—which represents unfair competition, may I suggest, as between two drug manufacturers. However, I am prepared to leave that.—A. That is the manufacturer's policy. It is not the retailer's policy.
- Q. Let me suggest or ask you this. Is a Rexall druggist, for example, obliged to sponsor a 1 cent sale in his drug store?—A. No, he is not.
 - Q. He is not?-A. No.
- Q. Are you familiar with the form of contract which the Rexall manufacturer insists upon his retailer signing?—A. No.
- Q. Have you ever heard of any such contract?—A. No, not personally—I do not know anything about it.

Q. And on behalf of your association you would assert that you have no knowledge whatsoever of any contract being insisted upon by the Rexall drug people?-A. I do not know of one. I have never seen one or heard of one. As an association we would have nothing to do with it whatever.

Q. Are you familiar with any contract of any kind signed by retail drug

dealers?-A. No.

Q. None whatsoever?—A. None whatsoever.

Q. Are you familiar at all, Mr. Preston, with any legislation that might be in effect anywhere in Canada curbing the practice of loss leaders?-A. Well, I think they tried it out in British Columbia but I do not think it operates. I

do not think it passed.

Q. Well, have you had any occasion, Mr. Preston, or has any member of your association had occasion to approach the British Columbia government to take action under whatever legislation may exist, as far as loss leaders are concerned?-A. Not that I know of. Really, I do not know anything about it. It is just a rumour—hazy with me as it happened many years ago.

Q. Have you any knowledge of your association or of any druggist in Alberta or any other province asking to take action under provincial legisla-

tion to curb the practice of loss leaders?-A. No.

Q. In fact you are not familiar with any loss leader practice that has been indulged in within recent years—that is in your business—to any appreciable extent?—A. None whatsoever.

Q. None whatsoever?—A. No, but the other week there was an outbreak this Duquette case. That is all.

- Q. Yes, and you assume, Mr. Preston, that although it has not actually occurred it is bound to occur should legislation be passed prohibiting resale price maintenance?—A. I think loss leaders would be on our doorsteps tomorrow. I have mentioned that many times.
- Q. You come to that conclusion largely as a consequence of a feeling that certain members of your organization will cut the throats of others as it were, and destroy certain smaller or weaker members of your association?-A. Yes, sir.
- Q. And you have no method within your organization of dealing with that situation?—A. None whatsoever.
- Q. Then, finally, Mr. Preston, you would be perfectly satisfied to see federal legislation passed prohibiting resale price maintenance provided there was legislation passed prohibiting at the same time the practice of loss leaders? -A. That is our big point, yes.
- Q. Then you are not so much opposed to the removal or prohibiting of the practice as you are favouring the status quo where we have no legislation prohibiting loss leaders?—A. Yes, I am not in favour of having legislation that would favour any one group to the detriment of another.
- Q. Yet, within your organization you feel that very condition would develop?—A. Yes, sir, I am certain of it.
- Q. One other question before I conclude. Your organization is opposed, we will say, to grocery stores retailing drugs?—A. Yes, as an association.
- Q. Regardless of whether the retail grocery store may be situated 40 miles from the nearest drug store?-A. No, no.
- Q. Well, either you believe in it or you do not?—A. No, no, that is not a fair question. May I answer this way? In Ontario, for instance, we would be silly if we were to say that a general store 20 miles or 40 miles as you gave it, should not sell patent medicines—even seidlitz powders and castor oil, because we could not service that area. The people in that area need service. We would be the last ones to say that and we would assist the general store if he was within the confines of the Pharmacy Act, in carrying out service.

Q. Well, where is the cut-off as far as that is concerned?—A. Well—

Q. I said 40 miles because I was thinking of a certain specific case. What is the cut-off?—A. Well, we think that people in those areas need those commodities and should be able to procure them from the grocery or general store but, in the urban centre where there is a druggist and a grocery, I do not think the grocery should take our drug lines. I am not talking about things they can sell that would naturally be their lines—that is under competition of course.

Q. Even if the grocery store were not 40 miles but 5 or 10, where is the cut-off?—A. Well, where we cannot service people.

Q. But you may argue that you can service them for 20 miles out, in this

modern day and age:

I have just one other question. Of the 40 per cent of general sales that do not fall within the price maintenance sales, did you tell Mr. Dickey that there were no branded goods? Are there no branded goods among the 40 per cent that do not fall under resale price maintenance?—A. Owned, branded?

Q. 60 per cent of the commodities and goods sold by a drug store are sold

under resale price maintenance?-A. Yes.

Q. Of the 40 per cent—you say that 40 per cent is outside the field of resale price maintenance?—A. Yes.

Q. And there has not been chaos there, Mr. Preston, as far as the 40 per cent

is concerned?—A. 22 per cent of that is in dispensing.

- Q. I beg your pardon?—A. 22 per cent is dispensing and we do not consider that. There could not be chaos there. That reduces it to 18 per cent.
- Q. You have no evidence of chaos as far as sales outside resale price maintenance are concerned?—A. No.
- Q. What might happen to them is largely a matter of conjecture? It is what you think might happen—there is no actual evidence on it?—A. Oh no, that is based on my long experience, and knowing the trade intimately.
- Q. You have not too much faith in your associates in the drug business?—A. No, I have neither too much faith in my associates in the drug business nor in human nature.

By Mr. Stuart:

- Q. Mr. Preston, I notice in your statement you said you did not think that groceries should handle drug lines. Is that correct?—A. Real drug lines.
- Q. With respect to the 4,200 drug stores you have mentioned across Canada, what percentage of those drug stores would serve meals and lunches?—A. I do not know.
- Q. Would it not be quite a large percentage of them?—A. No, a very small percentage.
- Q. Very well, I shall leave your answer as it is, but I have my own opinions. In most drug stores, is it not true that you would find tobacco being sold in nearly every one, while perhaps there would be a tobacco store on the very next corner?—A. That is right, but remember, tobacco is a drug.

The CHAIRMAN: Page General MacArthur.

By Mr. Stuart:

- Q. Are not books and magazines sold in drug stores where they are sold in stores which sell nothing else as well?—A. Some would be sold in drug stores.
- Q. And you have mentioned cameras, and so on.—A. Yes. Most of our better stores sell cameras and Kodaks.
- Q. And the drug stores still carry those lines?—A. Yes, they do and they always have.

Q. Would you think that such a practice might be unfair to other types of the retail trade?—A. In that case, the kodak company comes to the druggist. The kodak company thinks that the druggist is the best distributor.

Q. You mentioned the fact that chain stores were today, to a greater extent, selling drugs or things which a drug store would normally sell. Would you apply the margin of profit to those particular articles which might be attributed to the chain stores?—A. You mean, our chain stores?

Q. No. You spoke of other chain stores, general stores, groceries, such as Loblaws or any other grocery store.—A. I think they are just out after more volume. They have put in wool and other lines as well.

Q. Will you not say that the margin of profit in the drug line is very much greater than it would be in the food line?—A. Yes, oh yes!

Q. Would not that be an attraction to the chain store to take in these drug

articles and retail them?—A. It might be.

- Q. I think it would be and my next question may be out of order, however, here it is. I noticed in the list of retail prices which you have here, that Pepsodent tooth paste sells for 95 cents. You will find that on the back of page 9. It is on the back of the price list. I am not familiar with the chart which you have made up. But I take it for granted that that toothpaste cost the retailer 76 cents. Is that correct?—A. That is right.
 - Q. That is the margin of profit that he is allowed?—A. 20 per cent, yes.

Q. That is the retail margin?—A. That is the correct price, yes.

- Q. Then, maybe this is out of your jurisdiction completely, but I ask you the question because I feel that the manufacturer is taking a full advantage in this country when a tube of toothpaste sells for 95 cents here in Canada, while the same tube of toothpaste sells for but 60 cents in the United States. Do you think the same manufacturer who manufactures that article in the two countries would have any legitimate reason for that spread?-A. I am not a manufacturer.
- Q. But I have asked you for your opinion. Is there any necessity for such a great differential between the same article as priced in the United States and as priced in Canada?

Mr. BEAUDRY: Mr. Chairman, on a point of order, I object to the extracting of opinions from witnesses who are not qualified as experts in any given field.

Mr. STUART: I was not asking you for your opinion, Mr. Beaudry.

Mr. Beaudry: I have a right to rise on a point of order, Mr. Chairman.

The CHAIRMAN: I think this question had better be asked when we have the manufacturers before us.

By Mr. Stuart:

Q. Would any of your supplies in the drug business come into Canada from the United States?—A. I suppose that some of the basic ingredients would.

Q. They do?—A. I suppose so.

Q. I can form my own opinion as to the price spread.—A. I do not know where the manufacturers get their supplies.

The CHAIRMAN: I think Mr. Stuart was thinking in terms of propriety articles.

The WITNESS: No, no, Pepsodent toothpaste would be manufactured here.

By Mr. Stuart:

Q. You have mentioned many articles, some of which would be manufactured here in Canada and some of which would be imported from the United States?—A. I think in the main most of the companies in the United States would have established subsidiaries here in Canada.

Q. The mark-up price is 76 cents; the wholesale price is 76 cents for a

tube of toothpaste in Canada?—A. That is right.

Q. And on that tube of toothpaste the cost in Canada would be just about double the wholesale value of it in the United States. I would like to have some witness explain that to me.—A. I think the manufacturer could tell you.

Q. Might I ask this gentleman here?

Professor Fuller: I do not know if I can give you a successful answer; but I would like to suggest that if that price were reduced, you would be taking wages away from Canadian labour.

Mr. Stuart: But that is not what I am asking you. I have been given to understand that these figures are authentic and that the cost of manufacturing that tube of toothpaste runs anywhere from 11 cents to 14 cents. Do you think that would be correct?

Professor Fuller: I would not have any idea of the cost at all because costs are based upon sales, not simply on the cost of the raw materials and the labour which go into the thing. Costs are based on sales over a period of time.

Mr. STUART: You say they are not based on the costs of the materials and the labour?

Professor Fuller: Not merely.

Mr. Stuart: I think that would apply pretty much to aspirin tablets, would it not?

Professor Fuller: Yes. We can turn out aspirin tablets for 9 cents or 10 cents a hundred, providing we leave out the cost of the machine and interest on the capital which is invested in the machine.

Mr. Stuart: The same machine which manufactures aspirin in Canada could manufacture aspirin in the United States, could it not?

Professor Fuller: Yes.

Mr. STUART: Yet aspirin can be bought in the United States for one-sixth of what it can be bought for in Canada.

Professor Fuller: But remember, there is an exchange rate to be considered, to begin with.

Mr. Beaudry: Mr. Chairman, I rise on the same point of order.

The CHAIRMAN: Mr. Stuart, in fairness to the witnesses, please remember that these witnesses come from the retail trade not from the manufacturers. When we get the manufacturers before us, you might ask your questions of them.

Mr. STUART: That is fine, Mr. Chairman.

The CHAIRMAN: Now, Mr. Garson.

By Hon. Mr. Garson:

- Q. There are one or two answers which you have given which leave me a bit confused. I wonder if you would clear up my confusion for me.—A. I will do my very best, sir.
- Q. You mentioned that when the British Columbia organization asked yours to secure a 40 per cent mark-up, that that was a discount. I think you used that term, a discount on the selling price.—A. That is right.
- Q. I just want to make sure that I understood what the significance of that is. That is to say, that if the article were sold at \$1, and the retailer got a 40 per cent discount off that, his purchasing price would be 60 cents?—A. That is right.
- Q. And his profit would be 40 per cent on 60 cents, or $66\frac{2}{3}$ per cent profit?—A. That is right. We base all our margins on the selling price.

- Q. When I was reading the brief I assumed that they were mark-ups on the cost.—A. No, on the selling prices.
 - Q. And that would apply to all the figures?—A. Yes, everything.

Q. And in that way what you stated as a $33\frac{1}{3}$ per cent discount would become 50 per cent profit.—A. Fifty per cent profit on costs.

Q. I thought I understood you to say that if resale price maintenance were abolished, all of the articles which are now sold under that system of selling would become loss-leaders; and I understood very clearly your meaning there. But you also stated that if resale price maintenance were abolished, prices would rise to the consumer. I understand each of your answers quite clearly, but the two of them taken together confused me. Could you reconcile those two answers for me so that I can understand what you are driving at?—A. I did not mean to say that if resale price maintenance were declared to be illegal that prices would rise. I think prices would drop on those commodities, on the overall price of the drugs.

Mr. THATCHER: But that is not what you said.

By Hon. Mr. Garson:

- Q. It is just to clear up this question that I raised it, in fairness to the witness and to the rest of us. I was quite clear, and you repeated it once or twice in reply to Mr. Thatcher, when you said that prices would rise, and therefore in the interests of the consumer, resale price maintenance should be retained. Secondly, I think you said they would all become loss-leaders. Now, you say that your second answer is the correct one?—A. Yes, I think so. I am sorry if I erred because probably what I was trying to say was yes or no to the question which was put to me and sometimes it is not quite clear. But what I certainly meant to say was that if you should illegalize price maintenance, prices on those items would certainly drop.
 - Q. You mean, they would come down?—A. Yes.
- Q. And that would mean a prejudice to the retail dealer, but something which the consumer might regard as perhaps beneficial from his point of view?—A. Yes. The consumer would immediately benefit from that; but in the overall picture, he would not benefit at all because as I tried to explain, if you lose on the bananas, you will make it up on the oranges. And when I was in business, I used to think that if you could not get 32 per cent on gross, you could not stay in business. So, if you can only make 5 per cent or less on these articles, on which under price maintenance you can make 20 per cent, you would then have to make it up on something else or go out of business.
- Q. Yes, quite; and in that connection, since these other articles are not price maintained, would he, in raising his price to make up his profit on those other items, not have to meet the competition of his fellow merchants, and of the chain and department stores?—A. Yes.
- Q. So his ability to secure that compensation would be limited by that competition?—A. But the chain and department stores would also raise their prices, because they have to stay in business, and you cannot sell loss-leaders at less than cost unless you make it up on something else.
- Q. Precisely. And did you not, in reference to Mr. Shaw's question of a few moments ago, concerning the Rexhall One-cent sales—did you not have to sell at prices which are in effect and substance loss-leaders?—A. Yes.
- Q. And you said that that was something you could not stop because they were under the control of the manufacturers chains and that they can sell their own products at any price they like?—A. Yes. But those sales last only for six days in a year, three days in the spring and three days in the fall; and it is only on controlled lines. You have mentioned Rexall. The

Rexall one-cent sale is organized and operated by the Rexall Drug Company on behalf of their agents only, or for their agents who want to participate. They do not have to participate. Agents who do not wish to participate in the one-cent sale need not do so. But it is all controlled by the Rexall Drug Company, and it is only on the drug products which they sell to the distributor that the one-cent sale applies. That is their remedies and cosmetics and writing pads and stationery. You buy all that material from the Rexall Drug Company as an agent of theirs. You do not buy anything—there is nothing else on that one-cent sale but products that the Rexall Drug Store sold you for that sale.

Q. You would not suggest that competition is any less severe to you because it has the name "Rexall" attached to it?—A. I do not quite understand

you.

Q. I mean, if these reduced prices take that particular form they are a competition that you have to meet and they reduce your turnover as well?—A. At the time they operate they are really competition, but they only operate for six days in a year.

Q. And you think the loss-leaders would operate—A. For 365 days a year,

particularly on the week-ends.

The CHAIRMAN: Our agreement was that we would quit at 1 o'clock. There have been six speakers who have said they would like to go on now. Does the committee want to hear these witnesses tomorrow morning provided the witnesses will be available tomorrow morning?

The WITNESS: Well, may we come back on Monday? I happen to have an uncle who is 85 years old and we are going to have a birthday party. I have already lost my vote, which bothers me a lot, and I do not want to miss the birthday party.

Mr. Thatcher: Mr. Chairman, the witnesses have given us this list of resale price maintenance products at the back. I wonder if they could give us a list of non-resale price maintenance products—maybe 250 products as closely similar to these as possible so that we can compare the market values?

Mr BEAUDRY: You mean a price on products on which there is no price quoted?

The CHAIRMAN: Mr. Thatcher has asked for a comparable list of goods which are not price maintained. Is that possible?

The WITNESS: We would certainly be glad to do it but I do not think we can do it by Monday.

The CHAIRMAN: The steering committee will meet and we will agree to take these witnesses at our convenience.

The WITNESS: Well, may I request that we come on Monday?

Mr. Beaudry: On that very point; the committee has already agreed to sit four days a week excluding Monday.

The CHAIRMAN: Five days a week.

Mr. Beaudry: I stand corrected. I had thought we had agreed to sit Tuesday, Wednesday, Thursday and Friday.

The CHAIRMAN: No, we are sitting five days of the week. The secretary will get in touch with you, Mr. Preston.

Will the steering committee just stay for a minute or two?

—The committee adjourned.

APPENDIX "A"

This
Presentation
is being made to the
Joint Parliamentary Committee
Appointed
to study the
MacQuarrie Interim Report
Relating to Resale Price Maintenance

by

THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

Tuesday, November 20, 1951.

PREFACE

In the hope that it will facilitate the work of the Committee, this Presentation is prepared in as concise form as possible.

This Brief expresses the opinions of the Retail Pharmacists of Canada in relation to Resale Price Maintenance.

It is accompanied by supporting documentary evidence of the statements and opinions contained therein.

CONTENTS

Brief of

THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

APPENDIX I

APPENDIX II

APPENDIX III

THE BRIEF

Mr. Chairman and members of the Joint Parliamentary Committee. We are pleased to have this opportunity to present our case on resale price maintenance as it now is operating. This Brief is presented on behalf of every retail pharmacist in Canada, with the exception of the thirty-three (33) drug store owners in our new sister Province of Newfoundland. Our total membership is 4,236, which includes independent retail drug stores, chain drug stores, and the drug departments of the large department stores.

In pointing out to you why we consider the present system of resale price maintenance beneficial to the consumer, we must emphasize that we can only speak for our own retail group, the pharmacists of Canada. To give you a quick view of our industry we can say that the total volume of business in all drug stores for 1950 amounted to \$229,715.929.00 and that only 22 per cent of that business was in the prescription department. This latter statement has a significant bearing on the subsequent examination of resale price maintenance as it applies to our retail group.

It is our contention that the principle of resale price maintenance is so woven into the fabric of our economy that any move to declare the practice illegal should not be made hastily, nor without scientific investigation. Undoubtedly the government felt that such a scientific investigation was made when the Committee under the chairmanship of Mr. Justice MacQuarrie was asked to study the Combines Legislation with special reference to resale price maintenance.

We have examined the Interim Report brought down by the MacQuarrie Committee and do submit that the Report does not provide a sufficient basis on which to enact legislation against resale price maintenance. To this end we have included as Appendix III to this brief a commentary on the Interim Report written by Professor H. J. Fuller, in charge of pharmaceutical administration at the Ontario College of Pharmacy. Professor Fuller is a pharmacist and an economist, holding a graduate degree in economics from Yale University, and was Assistant Professor of Economics at the University of Connecticut for 18 years. We do not propose to dwell at length on this commentary because it will speak for itself. It is Professor Fuller's opinion that the methodology used by the Committee is faulty and that the conclusions reached cannot be supported by the facts, as they appear in the Report.

IS PRICE MAINTENANCE DETRIMENTAL TO THE CONSUMER

The stated reason for making price maintenance illegal is that such legislation will bring down prices. We submit that the prohibition of price maintenance will not bring down prices, and in some instances will increase them.

Because price maintenance has been operating in this country since 1910, and to a much fuller degree in our retail group only since 1927, it is not possible to get comparative Canadian statistics to prove our statement that the abolition of price maintenance will not bring down consumer prices. Therefore, for these statistics, it is necessary to turn to the United States which has legalized price maintenance in all but three states and the District of Columbia. Legalized price maintenance, or the Fair Trade Acts, as they are called in the United States was given impetus by the passage of the Miller-Tydings Act in 1937. California was the first state to enact legislation setting up Fair Trade and 45 other states have followed.

In a recent bulletin from the Bureau of Education on Fair Trade entitled "Current Research Studies on Fair Trade," it was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised Fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for these products, taken as a whole, in the 45 Fair Trade states than in the non-Fair Trade area of Missouri, Texas, Vermont, and the District of Columbia. The price differential between Fair Trade and non-Fair Trade areas is very slight, the maximum difference being 3·7 cents in favor of Fair Trade. The second important point which the survey shows was that drug stores in the Fair Trade states charged less in 1948 for all their items, taken as a whole, than did drug stores in the non-Fair Trade area. And finally, the survey revealed that drug stores in the Fair Trade states are operated more efficiently, on the average, than are those in the non-Fair Trade area.

Therefore, the conclusion must be that if the experience in the United States is any criterion, then the Canadian consumer cannot expect that prices will come down in drug stores if price maintenance is declared illegal.

Before we carry our argument for price maintenance further, we should comment on the present status of Fair Trade in the United States. Members of this committee may recall that a recent decision of the U.S. Supreme Court was hailed in the press as the "death of Fair Trade" and started a price war among two large departmental stores in New York. On October 10, 1951, the Globe and Mail, a reputable Toronto newspaper, printed on page one, "Its promise of resale price legislation was the government's answer to those critics both in parliament and in the country who have been demanding measures to curb the rising cost of living. Similar legislation has been brought forward in the British Government. In the United States, a court decision has achieved the same end". This last statement is absolutely untrue. The court action had nothing whatever to do with any cost of living outcry. A whiskey dealer in Louisiana cut the established price of whiskey. He was sued by the manufacturer. He took his case to the Supreme Court of the United States which ruled only that the non-signer clause of the Fair Trade laws was invalid. It did not in any way invalidate the right of the manufacturer to make contracts with distributors relative to prices.

Will the consumer lose if price maintenance becomes illegal? In the first place, if the independent retail druggist could not depend on the revenue from the price maintained merchandise he sells the whole system of drug distribution would have to be curtailed. This is no small factor to consider when studying the problem of price maintenance. It is no exaggeration to state that the present system of price maintenance in pharmacy does not act to the detriment of the consumer, and indeed, benefits him a great deal. It should be made perfectly clear that if the pharmacist had to depend entirely on dispensing and the sale of drugs (which Federal and Provincial laws say may only be sold by registered pharmacists) large areas of our country would be without the present efficient health service.

As we have stated previously, we have 4,236 registered drug stores in this country yet less than 50 of them can exist on prescription business and the sale of sick room supplies alone. Those dispensing stores are located only in the largest metropolitan centres. The 9th annual drug store survey taken by the Canadian Pharmaceutical Association found that Canadian drug stores in 1950 dispensed 28,248,102 prescriptions or an average of 6,859 per store per year. The prescription business accounted for, on the average, only 22 per cent of the total volume of the drug store.

We admit that the consumer is not much interested in any arguments except those of price. As the late Justice L. D. Brandeis of the U.S. Supreme Court has stated, the consumer is shortsighted and unorganized and the big interests use him to their own interests. In the statistical part of this brief we

have quoted Mr. Justice Brandeis to some extent because he was a life-long champion of the right of price maintenance. "Thoughtless and weak he, (the consumer) yields to the temptation of trifling immediate gain, and by selling his birthright for a mess of pottage, becomes himself an instrument of monopoly.

But, if the consumer is shortsighted the legislator need not be, and arguments which might fall on deaf ears if presented to the consumer should be given considered thought by the members of this committee. We mentioned that the ability of the retail pharmacist to sell in competition with the largest outlets through the present system of price maintenance enabled him to perform a community health service which he would not be able to do otherwise. Let us look deeper into the ramifications of this statement. Pharmacy is a profession which is gaining more and more stature as the research laboratories of the pharmaceutical manufacturers create potent and complex drugs. How quickly conditions have changed in the profession of pharmacy can be understood from the statement that 50 per cent of the prescriptions filled in drug stores today could not have been filled 10 years ago, and 75 per cent of the prescriptions could not have been filled 20 years ago. There are eight pharmacy colleges or faculties in Canada today and all of them are now giving a four year course in pharmacy with a degree of bachelor of science in pharmacy. The physician is learning to depend on the well trained pharmacist more and more for his information about new drugs coming on the market. The profession of pharmacy is meeting this demand in many ways such as providing longer courses of training for pharmacists, better laboratories for research, highly trained teachers and money in support of research. All of this health service which the public is inclined to take for granted feeds on the retail drug store. Only a limited number of our pharmacy graduates each year enter manufacturing, hospital or research pharmacy; by far the greatest majority go into retail pharmacy, where they are in constant touch with the physicians in their neighborhoods.

If we, as a profession, are to continue attracting high quality students we must be able to give them some guarantee for the future.

The Legislation Would Be Discriminatory

If the government makes price maintenance illegal it would be, in effect, passing discriminatory legislation; legislating for the benefit of the larger operator to the detriment of the small. To carry the thought to its logical and very possible conclusion, the large operators could afford to loss leader the nationally advertised products until they would achieve an effective monopoly in the distribution of the price-cut merchandise. (Quote Fuller brief re competition.)

We have heard the argument that if the large operators cut the price on drug store merchandise the manufacturers of those products would have to reduce the price of the same merchandise to the small retailer so he could compete. The thinking in this statement is evidently that the manufacturer would be forced to bring down his price simply because he could not afford to have his entire distributive system destroyed by the tactics of the price jugglers.

Such thinking does not take into consideration the practical principles of marketing. One of those principles recognizes that quantity buying is the only method by which one retailer gets an advantage over another. Obviously the small retailer cannot buy in carload lots as the large retailer can and if the manufacturer tried to adjust the imbalance between these two customers by giving the small retailer a better price he would soon find that his big customer would be demanding even greater advantages.

Does price maintenance protect the inefficient?

A favourite statement by the opponents of price maintenance is that it protects the inefficient operator to the detriment of the public. Ironically enough the statement is often made by representatives of the labour groups where union scales of wages provides for the same rate of pay without regard to the productivity of the worker. Indeed, in some trades the productivity of the worker is subject to the dictum of the union officials.

How valid is the accusation that price maintenance protects the inefficient operator? Again we turn to the Bureau of Education on Fair Trade and its publication of "Current Research Studies on Fair Trade" for some light on this question. The figures for this study were provided by 1,122 drug stores (1,051 in Fair Trade States); 71 in the non-Fair Trade area. It was found that the operating costs of drug stores in the Fair Trade states are 26.17 per cent of sales; whereas the comparable cost of drug stores in the non-Fair Trade area is 27.57 per cent of sales. But the most telling refutation to the charge that the small operator is inefficient comes from the continuing studies of the Harvard Graduate School of Business Administration which show that the operating expenses of all department stores in the United States, as an average was 31.15 per cent of sales in 1948.

If the large operator is not more efficient how can he afford to use the nationally advertised products as loss leaders? One does not have to look far for the answer to this question. What these operators lose on the loss leaders they make up on other free-priced articles. It was a well known fact during the last period of price cutting, in the middle twenties that customers found it difficult to come out of a drug store with the deep cut article which had been advertised; usually all the wiles of salesmanship were exerted to sell a similar "own brand" or unknown brand product, which in most cases, the customer did not want. Almost without exception this "own brand" merchandise carried a much higher margin of profit than the usual markup on the nationally advirtised price maintained merchandise.

As Appendix 11 of this presentation we have attached a list of 251 fast-moving nationally advertised drug store products. In this list you will find the manufacturer's established price for each product. The price which the retailer must pay the wholesaler, and the unit cost price of the articles. To our mind the most important column in this list of prices is the one showing the actual profit which the retailer gets for each item. The average gross profit which this extensive list of merchandise shows is 25.17%. Because of co-operative wholesaling some druggists in Canada get commissions on purchases or discounts from their invoices which, at the maximum, add another 6.75% to the profit. Therefore the average profit of the druggists on this list fortunate enough to belong to co-operative wholesale houses would be 31.8%. It should be pointed out here that druggists in some parts of Canada do not enjoy the extra commissions or discounts which bolster this figure from 25.17% to 31.8%.

In the light of the above we submit that the following paragraphs of the MacQuarrie Report do not apply to the retail drug business and therefore weaken the whole argument in favour of making price maintenance illegal:

First, the high margins determined by resale price maintenance may be used by large stores to expose the small retailer to a more acute form of competition in the field where prices are not maintained. The common policy of department and chain stores seems to aim at a certain desired margin for a department or unit. If the margins guaranteed in the sector of price-maintained goods are above the desired general level, large stores may be put in a position where they can reduce abnormally the price of products which are not maintained by the manufacturer.

Second, high margins do not necessarily mean high profits. High markings merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover, high margins provide a strong inducement to enter into the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result.

The first conclusion which appears in the MacQuarrie Interim Report is that the direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price maintained goods. We submit that this statement is not true as far as our industry is concerned. In the extensive list which we mentioned above (Appendix 11) you will find that there are 10 brands of tooth paste, 7 brands of hair tonic, 4 headache remedies, 9 shaving creams, 5 disinfectants and 5 shampoos. In a recent Druggists' Price Book, published by the Canadian Pharmaceutical Journal, there were listed 14,000 drug store products. Almost every type of article has several competitors, all with different prices. Surely this does not indicate the elimination of competition! It is the very opposite to the monopolistic trend mentioned in the MacQuarrie Report.

Government Itself Uses Price Maintenance

We cannot understand how any government either federal or provincial can legislate against the principle of price maintenance when they have used it most effectively themselves to bring about orderly and efficient marketing. The Federal Wheat Marketing Board is a good example of the principle of price maintenance at work; in this instance the Wheat Board control the marketing of this important commodity at all levels. Actually, as pointed out on page 43 of our Appendix 1, the provincial marketing boards go far beyond the type of resale price maintenance with which we are concerned. The prices of certain commodities are fixed by the government and there are no adequate alternatives to which the consumer can turn.

There is one opinion in the MacQuarrie Interim Report with which we wholeheartedly agree. It is found in the following very important paragraph:

As to the "loss leader" device, the Committee believes that it is monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger: extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced that there can be found other effective and more desirable methods of controlling the "loss leader" than minimum resale price maintenance. Present circumstances afford time to make a careful study of such methods and the Committee, therefore, does not think it imperative to make an immediate and hasty recommendation regarding that practice.

We agree that the "loss leader" device is incompatible with public interest, simply because it leads to retailer monopolies which could be used to control prices to the deteriment of the consumer. The other effect of "loss leadering", as we have pointed out, is that it will weaken the entire distributive system as now performed by the small independent retailer.

In view of the above opinion of the MacQuarrie Committee we find it difficult to visualize legislation which will prohibit the manufacturer from enforcing his minimum prices without writing legislation to eliminate the "loss leader" device. We, as retail druggists, who have seen the "loss leader" in action, maintain that there is no such thing as price cutting without the

"loss leader". The one inevitably follows the other. If the government legislates against the "loss leader" does it intend to state how much a product can be cut in price? Will the legislation tell us when a product is merely cut in price, and when the depth of the cut makes it a "loss leader"?

It is the contention of the pharmacists of Canada that the moment legislation is enacted making price maintenance illegal, the retail economy of this country will be open to the dangers of the "loss leader" device. We cannot agree with the opinion of the MacQuarrie Report that "we do not believe it (the loss leader) presents any immediate danger".

The Interim Report also mentioned in the paragraph just quoted that "relative scarcity" would prevent the use of the loss leader. There is no special scarcity of merchandise in the drug industry and since most drug store products have only a controlled demand; that is, a consumer usually buys a headache remedy when he has a headache, the net result of loss leadering would be the transference of the business from the independent drug store to the large operator. Such transference would take place not only in the large centres close to the price cutters but due to the gigantic mail order business done in this country all country areas would be affected as well. The country drug store owner today is in very real competition to the mail order depots established in his town.

In the days of the most rampant price cutting, particularly in the middle twenties the small independent druggist was in a precarious financial position. No better description of the havoc wrought could be used than that given by L. V. O'Connor, Commissioner of the Combines Investigation Act in his report on The Investigation of the Proprietary Articles Trade Association, dated October 24, 1927. He ends a chapter on "Price cutting" with these words:

... the condition of the trade had become desperate, and that many of the wholesalers and retailers were bordering upon bankruptcy...

Today, thanks to the regulated and controlled competition provided under resale price maintenance, he is able to carry many expensive modern drugs in stock, sometimes for years, until the emergency arises when the physician will call for them. In effect, our present system of price maintenance has subsidized the nation's distributive system on prescription drugs, without loss to the public: being achieved by spreading the available business over the entire country instead of having it concentrated in the hands of a few large, monopolistic retailers.

The importance of the pharmacist's role in public health was the subject of special comment by the Honourable Paul Martin, Minister of National Health and Welfare, in a speech given at the Ontario Retail Druggist's Association convention on June 16, 1951:

Canadian druggists can be proud of their contribution to higher health levels in this country. Through the years your profession has developed its enviable reputation for serving the public and assisting the physician. I am confident that whatever the responsibilities of the years ahead . . . and they will be heavy . . . your prescription for the future will be to guard the high ideals of your profession and to extend the effectiveness of your service.

Let us hope that the government will not destroy the means whereby we may carry the responsibilities of which the Minister speaks or legislate against our ability to extend the effectiveness of our service!

Since this is a brief from a group of retailers we have had little to say about the manufacturers' position in price maintenance. Reducing the terminology to its simplest form, the whole burden of argument on price maintenance rests on the right of the manufacturer to say what the consumer

shall pay for his product, and therefore set the margin of profit through the distributive channels. When a manufacturer sells a product to a retailer two things are involved in the transaction; first, the product itself which the manufacturer sells, and the other is the trade-mark which the manufacturer does not sell. When the manufacturer establishes a minimum price for his merchandise he is actually protecting his trade-mark; he is saying to the retailer that he may sell the product but he may not use the reputation of the manufacturer to build up his business, or bring customers into his store so he can sell him some "own brand" competing merchandise. In a judgment handed down by the U.S. Supreme Court it ruled that the manufacturer has the right to protect his trade-mark right down to the consumer. Because his reputation is involved he should have the same right to set the marketing policy of his product. This would seem to us to be one of the basic tenets of our free enterprise system of economy for which we have all fought so dearly.

Conclusions

We who have prepared this brief have had long experience in retail pharmacy, and we have seen the chaotic condition which resulted from previous price cutting periods. As Commissioner O'Connor stated, such price cutting is not good marketing, it is competition gone mad. We believe that legislation to make price maintenance illegal will bring down all the corrosive forces of predatory price cutting on our economy. Because of our belief we present our case with all vigor and all sincerity.

Our conclusions are that resale price maintenance does not react to the detriment of the consumer; to the contrary he receives substantial benefits from its existence. It is our opinion that the abolition of price maintenance will do nothing to bring down the rising cost of living. It will unleash a price cutting war which will create new monopolies and seriously curtail the distributive system by which the public gets its present efficient health service through drug stores.

Further, we conclude that any legislation to make price maintenance illegal would be discriminatory. We feel that we have present adequate proof that a high range of profit does not exist in the price maintained products and that it is only commensurate with a fair payment for the distributive service.

We maintain that price maintenance does not eliminate price competition.

We agree with the MacQuarrie Report that the loss leader is a monopolistic practice, and because it is so much a part of free pricing it cannot be controlled unless we keep our present system of price maintenance.

Finally, we maintain that the manufacturer has the right to protect his trade-mark, and thereby the reputation of his product by establishing the resale price.

APPENDIX 1

RESALE PRICE MAINTENANCE

BY

HORACE J. FULLER ASSISTANT PROFESSOR OF PHARMACY IN CHARGE OF PHARMACEUTICAL ADMINISTRATION THE ONTARIO COLLEGE OF PHARMACY

RESALE PRICE MAINTENANCE

In 1913 the Supreme Court of the United States held that manufacturers of patented articles could not fix the price at which retailers sold their product to the consumer.1 Louis D. Brandeis, who later became associate Justice of the United States Supreme Court,2 wrote "The Supreme Court is all wrong and I want to set machinery in motion to get this straightened out". "When a court decides a case upon grounds of public policy the judges become, in effect, legislators. The question then involved is no longer one for lawyers only. It seems fitting, therefore, to inquire whether this judicial legislation is sound".3

Brandeis worked indefatigably for a reversal of this decision. Three years later he was appointed Associate Justice of the Supreme Court. In 1937, twenty-four years after Brandeis took up the cause, victory came with the

passage of the Miller-Tydings Act.

Resale price maintenance is found in every major capitalistic country of the world. It is the obverse of "cutthroat competition". Some European countries have legislation making price-cutting illegal. The purpose of resale price maintenance is not to circumscribe competition but to strengthen it. The historian of the late L. D. Brandeis, Alpheus Thomas Mason, after examining both Brandeis' published articles and his personal letters, states:

Convinced finally of the wisdom of his position, he sought support from editors and businessmen: "It is very important that we, who believe in competition, should undertake to remove the restriction which the Court's decision has imposed upon legitimate business practice... We must afford protection to those agreements between competitors which preserve and make continued competition possible; and we must protect also those agreements which the individual engaged in competitive business develops for the prevention of "cutthroat" competition—so long as there is nothing in them against public welfare. The denial of this right would inevitably further capitalistic combinations. . . Ultimately, we must get an express legislative recognition of the right of the individual manufacturer engaged in competitive business to market his goods through retail channels at a uniform price. It is good morals and is essential to the existence of the smallest business concerns.

¹ Dr. Miles Medical Co. v. Park and Sons Co., 220 U.S. 409; Bobbs-Merrill Co. v. Strauss, 210 U.S. 339; Bauer v. O'Donnell, 229 U.S. 1. ² June 5, 1916.

⁸ Brandeis, L. D.—"Cutthroat Prices, the Competition that Kills", Harper's Weekly, November 15, 1913.

^{96256 - 4}

When the retailer can cut prices at will on trade-marked articles, he argued, injury redounds not only to the manufacturer but to the dealer and to the consumer public. The use of a "leader" sold at less than standard price to attract customers—or, as he termed it, a "misleader"—demoralizes trade in that article to the disadvantage of all concerned. But more than that, price-cutting paves the way to monopoly. It was among the most effective methods used by the Standard Oil and American Tobacco Trusts in exterminating the small independent producers and retailers. In the end the public was the loser: "Farseeing organized capital secures by this means the co-operation of the shortsighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain and selling his birthright for a mess of pottage, become himself an instrument of monopoly".

In condemning price fixing, the unthinking failed to distinguish between "the independent manufacturer who fixes the price on his own particular product and the monopoly or combination which fixes the price on a common article of trade". Price maintenance was not a device of monopoly but a method by which competition could be regulated and

protected.2

The Government of Canada has proposed legislation making resale price maintenance illegal. The reason for such a proposal is the recommendation of the Committee to Study Combines Legislation as contained in their Interim Report. The standard of judgment used by the committee is expressed in their words as follows:

By what standards should resale price maintenance be judged a desirable or an undesirable practice? They can be suggested in simple

form by two sets of questions.

First, does the system place the determination of prices, which is the mutual concern of producers and consumers, under social control either through competition or public regulation or does it set up a system of control by private law or agreement? Does it prevent the consumer from exercising his full influence in determining what services he is willing to pay for and what services he deems too expensive? In brief, does the system facilitate or restrict competition?

Second, how does the maintenance of resale prices effect prices, production, distribution and consumption? Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices? Does it direct adequate but no more than adequate resources to the distributive system? This

is the standard of economic efficiency?

We propose to show that resale price maintenance, first, does not circumscribe competition but on the other hand, strengthens it; second, does not increase the cost of living but, on the other hand, has been a stabilizing influence on prices. The method, though analytical, is of necessity, descriptive as well.

ANALYSIS OF MARKETS

Since competition is a market condition, it becomes necessary to examine what is meant by the term.

In our society, prices are determined by two major forces referred to as Supply and Demand. It is also true that Supply and Demand are both influenced by prices. Further, prices are influenced by the total amount of

¹ Mason, Alpheus Thomas,—Brandeis—A Free Man's Life, 1946, p. 425. The quotes within the quotes are from a letter from Brandeis to E. A. Van Valkenburg, June 13, 1913 and from a typed manuscript on Price Maintenance.

² Ibid,—p. 426.

purchasing power in circulation. If these forces are allowed to function freely in the market places, they automatically, without human interference, private or governmental, determine:

- 1. What should be produced
- 2. How much should be produced
- 3. For whom we should produce

Hence in competitive theory, the responsibility for prices rests with impersonal market forces. The theory of laissez-faire emphasizes regulation of business activity by prices. This is the orthodox view, and comes down to us from Adam Smith's The Wealth of Nations, 1775.

Competition then is a market condition in which there are so many buyers and so many sellers that no one buyer and no one seller can appreciably

influence price.

On the other hand, monopoly is that degree of unified control over supply or demand which will permit the regulation of price.

There are several kinds of competition:

- 1. Pure competition is merely competition free from all monopoly elements; and it prevails where the following conditions are found:
 - (a) the product bought and sold must be standardized, identical for all sellers, so that buyers will shift from one producer to another at the slightest difference in price;
 - (b) there must be so many buyers and sellers in the market that the purchases or sales of any one of them have no appreciable effect on the
 - (c) there must be no agreement as to price or quality among the sellers.

Quite apart from an excess or a deficiency, or an inequitable distribution, or general purchasing power, there are unfortunately many reasons . . . why in particular cases this happy purchasing power, there are unfortunately many reasons . . . why in particular cases this happy coincidence of private and social advantage does not exist. There is nevertheless this underlying tendency at work; and where it can be made effective, the liberal solution of laissez-faire, or free competition, is undoubtedly the one to adopt. It combines complete personal freedom with maximum economic efficiency.

A main purpose of policy must, therefore, be to ensure that this principle does work over the widest possible range of activities. The profit motive will work to the benefit of society only if producers can exploit neither the consumer by restricting output and thereby raising the price of the products which they sell, nor labour (or other factors of production) by restricting the number of workers whom they employ and thereby depressing the wage-rate which they have to offer.

Where there are many competing producers each producing a small proportion of the total where there are many competing producers each producing a small proportion of the total supply of a fairly standardized product, and each employing a small proportion of a fairly homogeneous type of labour, no single producer will have the power of exploiting the consumer or the worker. For since each producer accounts for so small a part of the total production and employment, a variation in his sales or employment alone will have an inappreciable effect upon the total market for the product or for labour; and he will not, by producing less, be able significantly to improve the terms on which he can sell his product or employ his labour.—Meade, James Edward (Professor of Commerce University of London) Planning and the Price Mechanism, The MacMillan Company, New York, 1949, pp. 56ff.

¹ Provided that there is not too large or too small a total monetary demand in relation to the supplies of goods and services available for purchase, and provided that there is a reasonably equitable distribution of that total monetary purchasing power, there are strong market forces at work promoting the most economic use of the community's resources. Consumers bid most for those commodities which they most desire; and if the distribution of income and property is reasonably equitable, the price offered by one consumer can be taken to be of equal importance to the price offered by another. Particular goods should then go to the particular consumers who offer the highest price for them. And producers, if left free, will in their own interest produce in greater quantity those things for which consumers offer the most in relation to the cost of production, and—through technical innovations and through the use wherever possible of cheaper resources in place of more expensive ones they will produce each commodity by the means which are technically the most efficient and which employ as much as possible of the plentiful (and therefore relatively cheaper) resources and as little use of the scarce (and therefore expensive) ones. In such circumstances freedom of consumers' choice combined with the profit motive produces the maximum social advantage. 1 Provided that there is not too large or too small a total monetary demand in relation to with the profit motive produces the maximum social advantage.

The wheat market, on the farmer's side only, represents practically pure competition. On the buyer's side, the wheat market is by no means purely

competitive ... 1

With respect to the number of buyers and sellers, competition is not sharply differentiated from monopoly but shades gradually into it. There may be a million of each, or a thousand or a dozen or only one; and as the number declines, conditions shade from practically pure competition to monopoly or monopsony.² (In the strict definitional sense, monopoly means only one seller, monopsony means only one buyer).

(The word monopoly, of course, means one. Again, in the strict definitional sense, monopoly means one seller. However, other terms are used to indicate relative monopoly, for example, duopoly means only two sellers, oligopoly means more than two but still only a few; monopsony means only one buyer, duopsony only two buyers, and oligopsony more than two but still only a few.)

2. Monopolistic Competition

This incongruous term describes a market situation in which there are a large number of buyers but a very small number of firms supplying the market. The reasons for the increase in this type of market situation need not be discussed here. The Temporary National Economic Committee of the United States noted:

Among the 1807 products, representing nearly half, by number and more than half, by value, of those included in the Census of Manufacturers for 1937, there were 291, or more than one-sixth of those in the sample, in which the leading producer accounted for 50 to 75 per cent of the total supply. One company, in each field, in some year between 1930 and 1940, produced 40 per cent of the Nation's output of industrial

1 for there may be only one or two local elevators buying wheat; this presents a picture of monopoly or duopoly—or, more precisely, monopsony or duopsony, since they represent the buyer's side of the market....one of a million wheat producers can exert only an infinitesmial effect on the price by offering or withholding his part of the total supply; he can sell all his product at the market price, but none at even a slightly higher price. One of a thousand producers can have only the slightest influence on the price; one of a dozen has a definite effect; and a single producer can set his own price,

With respect to identy of product, it may be perfectly identical for all producers, or nearly

With respect to identy of product, it may be perfectly identical for all producers, or nearly identical, or it may differ somewhat, or it may differ greatly. Number 1 hard wheat is almost perfectly identical for all producers, although not quite perfectly identical, for there are very slight differences in samples of Number 1 hard wheat. Some other farm products are less well standardized than wheat—fruits and livestock, for instance—and in these there may be enough differentiation so that some producers will be able to command a premium price in which there is a trace of monopoly. Since there is some differentiation, some buyers will pay this price rather than turn to the most acceptable substitutes. Any bushel of Number 1 hard wheat is an almost perfect substitute for another bushel, but no dairy cow or beef steer is so nearly a perfect substitute for another. Ise, John—Economics, p. 181.

^{2 &}quot;To shift further from conditions of nearly perfect product identity, Kellogg's Corn Flakes are much like Post Toasties, yet different enough so that some buyers who prefer Post Toasties will not accept Corn Flakes as a perfectly satisfactory substitute and will be willing to pay a premium price, if necessary, for their favorite cereal food. The producer of Post Toasties must meet the competition of other producers of cereal foods; but since no other cereal food is a perfect substitute for his own, he can charge a price that has an element of monopoly in it.

[&]quot;When we reach the realm of almost pure monopoly—for example, the electric company which provides current for lighting—we find gas lights and oil lamps very poor substitutes for electric lights; hence the electric company has a very strong element of monopoly power. Thus, with respect to product identity, we find every shading, from the practically perfect identity of Number 1 hard wheat to the high differentiation in lighting facilities, with resulting shading in the amount of monopoly power".—Ise, John,—Economics p. 181.

alcohol, 40 per cent of the corn products, 41 per cent of the farm machinery, 50 per cent of the towels, 60 per cent of the fruit jars, 66 per cent of the canned soup, and 85 per cent of the fire extinguishing apparatus and supplies. One company, in 1932, was said to manufacture 65 per cent of the cinema negative films, 75 per cent of the cinema positive films, and 85 per cent of the still film for amateurs.

Two companies manufactured 70 per cent of the heavier types of electrical equipment, 70 per cent of the electric motors, and 75 per cent of the watt-hour meters made in 1923 and produced 80 per cent of the distribution and power transformers and 89 per cent of the generators that were in use in 1925.

. . . in 1935, in 54 industries some of them very important, the four largest firms produced more than two-thirds, by value, of the total output; and in 1937, of 121 products, the four largest firms produced more than three-fourths of the total output.²

EIGHT INTEREST GROUPS AND THEIR ASSETS, 19353

(Millions of Dollars)

_ ′.	Morgan- First National	Rocke- feller	Kuhn- Loeb	Mellon	Du Pont	Chicago	Cleve- land	Boston
Industrials	\$ 3,920	\$ 4,262	\$ 0	\$ 1,648	\$ 2,232	\$ 858	\$ 1,066	\$ 425
Rails	9,678	0	9,963	153	0	0	0	0
Banks	4,421	2,351	548	672	396	2,595	338	740
Utilities	12, 191	. 0	342	859	0	813	0	554

TOTAL \$61,025

The recognized study among economists of the pricing mechanism under monopolistic competition is that of Edward Chamberlain in the *Theory of Monopolistic Competition*, Harvard University Press, 1936.

Monopolistic competition departs greatly from pure competition. Under pure competition, there are so many sellers that no one can appreciably influence price since any one of the producers controls only a small segment of supply and a small segment of the labour force. Under monopolistic competition, there are only a few sellers or producers and this few control a large segment of supply. The pricing policy of any one of them can appreciably influence price.

3. Imperfect Competition

Imperfect competition is a market situation in which there are many sellers but each seller attempts to differentiate his product slightly from those of his competitors. Often the differentiation is very slight and sometimes it is only imaginary. Sometimes the differentiation is one surrounding the conditions of sale, such as a specially good location.

Whereas limitation of the number of sellers is the characteristic of monopolistic competition, the characteristic of imperfect competition is differentiation in the product itself or the conditions surrounding its sale.

¹ Temporary National Economic Committee, Monograph No. 21 pp. 113-114.

² Ise, John,—Economics, p. 135.

³ National Resources Committee, The Structure of the American Economy, Part 1, p. 161

It is to this last group of goods, goods marketed under conditions of imperfect competition, that resale price maintenance is most applicable. differentiation of product is sanctioned by governments through the granting of patents, trade-marks, and copyrights.

4. Cutthroat or Destructive Competition

"Competition is said to be cutthroat or destructive when the existence of idle capacity and the pressure of fixed charges lead sellers successively to cut prices to a point where no one of them can recover his costs and earn a fair return to his investment." 1

5. Predatory and Discriminatory Competition

When one seller cuts his price for the sole purpose of eliminating another competition is said to be predatory.

When one seller confines the cut to a portion of his sales that competes with those made by another competition is said to be discriminatory.

The price cutter may:

- (a) cut price uniformly, deliberately sacrificing present earnings in an effort to obtain future monopoly power and profit.
- (b) discriminate among localities, temporarily cutting his price in one area while he maintains it in others, raising it again when he has elminated his local rivals.
- (c) discriminate among products, temporarily cutting his price on one brand while he maintains it on others, dropping the fighting brand when it has served its purpose.

The test of predation and discrimination is intent and that can only be known with certainty by the price cutter himself.

6. Non-Price Competition

Under pure competition the product bought and sold must be standardized, identical for all sellers, so that buyers will shift from one producer to another

1 Dean, Joel, (Graduate School of Business, Columbia University) Managerial Economics, 1951, p. 52

The competitive practices condemned by businessmen are of two quite separate types which should be clearly distinguished. Cutthroat competition sometimes refers to false

which should be clearly distinguished. Cutthroat competition sometimes refers to laise advertising, adulteration of goods, commercial bribery, defamation of competitors, and similar fraudulent practices. It would be generally agreed that such practices are undesirable, and they therefore raise no major question of public policy.

Second and perhaps more commonly, cutthroat competition refers to acts which tend directly or indirectly to lower the existing price structure... Cutthroat competition, thus defined, can arise only where there is excess capacity of the fixed factors, engaged in the industry. industry

An empirical study of cutthroat competition in the cotton textile industry then follows. Reynold concludes with:

"The process of adjustment, of course, has been painful for many, of those connected with the industry. The chief losers have not been the owners of New England mills, whose investments had in most cases been thoroughly amortized from previous earnings, but the New England textile worker. The closing of the mills has thrown some 100,000 New England workers out of employment, and large numbers of these workers are still unemployed."

One of the best expositions of this type of competition is that of Lloyd G. Reynold, One of the best expositions of this type of competition is that of Lloyd G. Reynold, Professor of Economics, Yale University, which appeared in the American Economic Review, Vol. 30, pp. 736-744, December 1940. A few "quotes" may point up the situation; "Economists have long maintained that free competition tends to promote economic efficiency. Businessmen, however, have remained singularly unconvinced. In trade journals and at manufacturers' conventions competition is termed "ruinous", "unethical", "cutthroat", "destructive". The control of competition through patents, tariffs, mergers, trade associations and informal agreements has been a major objective of business policy.

at the slightest difference in price. On the other hand, product differentiation is a characteristic of both monopolistic and imperfect competition, hence competition takes the form of competition in quality, style, advertising and salesmanship.

Clair Wilcox maintains that, "Competition in quality and in service may be quite an effective in giving the buyer more for his money as is competition in price. Competition in service, however, may compel the buyer to pay for something he does not use or want as a condition of obtaining the commodity he desires. Competition in style may give satisfaction to the buyer but it may also destroy the value of the goods he purchases by hastening their obsolescence. Competition in advertising and salesmanship are necessary concomitants of competition in quality, service, and style, but they may not, in themselves give the buyer a value which is equal to their cost. Each of these forms of competition is a common feature of the markets for manufactured consumers' goods." 1

7. Effective or Workable Competition

This type of competition is explained most concisely by Clair Wilcox in the Temporary Economic Committee Monograph 21, 1941 as follows:²

Competition among sellers, even though imperfect, may be regarded as effective or workable if it offers buyers real alternatives sufficient to enable them, by shifting their purchases from one seller to another, substantially to influence quality, service, and price. Competition, to be effective, need not involve the standardization of commodities: it does, however, require the ready substitution of one product for another; it may manifest itself in differences in quality and service as well as in price...It requires the presence in the market for several sellers, each of them possessing the capacity to survive and grow, and the preservation of conditions which keep alive the threat of potential competition from others. It cannot be expected to obtain in fields where sellers are so few in number, capital requirements so large, and the pressure of fixed charges so strong, that price warfare (sic), or the threat of it, will lead almost inevitably to collusive understandings among the members of the trade.

....The test of effectiveness and workability in competition among sellers is thus to be found in the availability to buyers of genuine alternatives in policy among their sources of supply."

8. Miscellaneous

We have defined competition as a market condition or a market situation and have briefly described the major situations. However there are many types of market situations.³ Professor J. M. Clark, Professor of Economics at Columbia University, states that the "number of mathematically possible combinations runs into the hundreds of thousands—and suggests the possibility that every industry may be in some significant respect different from every other, or from itself at some other stage of development."⁴

The foregoing analysis and description of market situations is admittedly superficial. Alfred R. Oxenfeldt has recently contributed a 602 page book

¹Wilcox, Clair.—in Competition and Monopoly in American Industry, TNEC Monograph 21, 1941.

²Ibid.

^{**}Oxenfeldt, Alfred R.,—Industrial Pricing and Market Practices, 1951, p. 70.

4Clark, John Maurice,—"Toward a Concept of Workable Competition" reprinted in "Readings in the Social Control of Industry", 1942, p. 456.

The term "market" is used here to refer to all the circumstances that influence production, sale, cost and demand for a product.

on the subject. Oxenfeldt is used as the 'raison d'état' because the Interim Report of the Committee to Study Combines Legislation quoted 24 lines from this colossal study in support of its view that "the general level of prices is higher with resale price maintenance that (sic) it would be if competition existed." Further, whether to enact or not to enact legislation restricting resale price maintenance hinges on this viewpoint. We feel therefore, that whereas it is physically impossible to write the complete text of Oxenfeldt's book into the record, it is possible to call attention to the conclusions given in the book used by the above named committee.

Oxenfeldt in his conclusions¹ states, "The few generalizations that emerge from the foregoing chapters only show how complicated a realistic explanation of price must be. One is tempted to conclude about prices that, like people, "every one is different."...the detailed analysis of prices presented in this book suggests that every price is unique in some important respect. No fairly simple explanation of price, like the law of supply and demand, has been

uncovered."

The General Conclusions of the book are twelve in number. They are presented here as evidence that the standard of judgment as stated in the interim report and on which so much depends is inadequate to the task of evaluating resale price maintenance.

GENERAL CONCLUSIONS²

First, there seems to be a universal distaste among businessmen for the kind of rivalry needed for pure competition and even for workable competition. It is not clear that public opinion would stand for the intensity of rivalry and the solvency by a hair that is implied by pure competition. Accordingly, there are almost incessant efforts by businessmen to escape the rigors of competition. Often these win the support of the courts and the public, who probably regard pure competition as ruinous competition. Frequently businessmen's efforts to lessen the severity of competition are successful; more often, they do not achieve as much as was sought, but the operation of markets is, substantially altered by these attempts to mitigate competitive pressures, nevertheless.

Second, many businessmen seem to be influenced strongly by considerations that make them both resist the impulse to charge everything the traffic will bear and refuse to accept prices lower than those they regard as fair, even if a lower price would yield a larger profit than the fair price. Businessmen have not been able to separate their business lives completely from their social relationships. While the ethical standards of business are very different—one would call them lower—from those governing most personal relationships outside business, businessmen are partly motivated by ethical notions. The growth of public relations consciousness has compelled businessmen to become articulate about their ethical standards. And once they have implied or stated a standard of conduct in order to win public approval for their actions, they are partly bound in future actions by these statements.

Nevertheless, in time of war or inflation, many firms seem to think only of profits. At such times, the nation's interest in avoiding price increases is obvious. They do occur, however, and they represent an apparent contradiction to the statement that businessmen are strongly influenced by moral considerations. Moral considerations operate primarily when a firm is or would become conspicuous. For example, a large firm ordinarily will hesitate to be the first to increase prices during

¹⁰xenfeldt, A. R.,-op. cit., p. 577.

²Oxenfeldt, A. R.,—op. cit., pp. 579-582

a period of national emergency. However, during such periods, many small or medium size firms will raise prices. Frequently prices will rise first in the more competitive sectors of industry, such as agriculture and textiles. After many prices have risen, executives of large industrial firms will not long hesitate to raise price. It becomes much easier for them to justify price increases when many other businesses have already raised prices; and to some extent their price changes go almost unnoticed among a large number of price increases.

Third, a large proportion of business activity does not take place in the office or on the market. Success in business often is achieved through negotiations with rivals and through activities that influence government on behalf of industry. The axiom "things equal to the same thing are equal to one another" is unassailable, but the statement that "business is business" is not completely true.

Fourth, businessmen enjoy wide latitude in their pricing and market practices. They have no kit of sure-fire tested nostrums to apply when beset by difficulties. Nor are businessmen mere playthings tossed about by overwhelming market forces. The manner in which the industrial system performs depends upon the activities of businessmen, who have it within their power to improve or worsen the performance of the economy. Rather than by automatically operating economy, our industrial system is run by private planning.

Fifth, the conditions surrounding the production and sale of products that are pertinent to an explanation of price are very numerous. The influence of each one seems to depend upon the combination of other circumstances in which it occurs. Generalizations about price on the basis of structural characteristics of the market tempting though they may be, are treacherous. Similarly, public endorsement of some structural conditions and condemnation of others without reference to all related conditions is a common error.

Sixth, the information about relative scarcities of productive factors, their productive contribution, the value to consumers of alternative products, and other related circumstances that should determine the output of individual products is not known to anyone. Businessmen know little, and cannot know all one would like them to know, about demand for their output, and cost calculations are subject to major errors. As a result, businessmen's calculations are only guesses. Even if they did know conditions of cost and demand, it is unlikely that maximization of profit under prevailing conditions would closely approach the best performance of which the economy is capable.

Seventh, prices often are not the major instrument of business market policy. Sales promotion activities, relations with distributors or with suppliers, the general provision of contractual arrangements, and the like seem to figure more importantly in businessmen's thinking than the determination of price. Very probably they are correct in thinking that prices are less important than some of these other instruments of business policy.

Eighth, prices of nearly all products are influenced in numerous ways by government action. The American economy is heavily regulated. However, most regulations are used to increase the income of the regulated industry and to increase the security of sellers in it rather than to protect the public. The welfare state is not new: but new groups are getting help from the state. One might say that prices are subject to an enormous amount of government regulation, but only to a trifling amount of government interference.

Ninth, strategic influences upon price are to be found along the vertical chain of processes between the raw material producer and the final consumer. The final price for a product is largely explainable by the prices at which it is transferred in various stages of completion from one firm to another along the vertical chain of processes. There seems to be reason to believe that transfers of goods tend to distort the proper use of resources, so that a reduction of these successive transfers would often be in the public interest.

Tenth, rivalry among sellers is almost irrepressible. Agreements that shut off competition in one phase of a business generally have the effect of transferring it elsewhere. Unless firms merge, their conflicting interests will find expression even if they come to extensive agreements with their competitors. Their desire to get ahead of other firms in the industry is a powerful motive, and many firms seem unable to curb it even to gain long-run advantage. The growing recognition among businessmen of the futility of price competition intensifies efforts to outdo other firms in sales promotion and in making

improvements in quality of product.

Eleventh, competition of an intensive sort can itself be a cause of monopoly. This apparent paradox is easily reconciled. If an industry suffers such rigorous competition that most sellers and employees are acutely distressed, the state is likely to come to their assistance by allowing them to exercise monopolistic privileges. This form of government gift to an industry does not require an increase in taxes, and therefore has an irresistible charm to legislators. If the government does not help them, businessmen may be driven to make agreements among themselves to assure their survival. One can get too much of a good thing—especially is this true of competition.

Twelfth, very intense market rivalry often has perverse effects. As just indicated, it can result in monopoly. It can raise price without bringing about a private agreement among rivals by increasing productive facilities and so raising costs. After redundant facilities are created, they give rise to a pressure that may ultimately cause margins

to increase.

Finally, evaluation of industrial arrangements and of the pricing process can have validity only when based on an analysis of all pertinent circumstances in concrete situations. No criteria of service to the public interest have yet been developed (and it is not likely that they will be) to permit reliable evaluation of elements of industry structure or business practice in general and without reference to the total situation within which it occurs.

Evaluation of industrial arrangements, even if they take account of all pertinent circumstances, have little value unless they compare existing conditions with some attainable alternative. The only situations that warrant change are those that can be made better-it is not enough to be able to imagine conditions that would be better.

There is nothing in these conclusions even as much as hinting that resale price maintenance should be outlawed as a matter of public policy. In fact there is much to indicate the opposite, for example: "frequently prices will rise first in the more competitive sectors of industry." "Generalizations about price on the basis of structural characteristics of the market, tempting though they may be, are treacherous." "The growing recognition among businessmen of the futility of price competition intensifies efforts to outdo other firms in sales promotion and in making improvements in quality of product." "One can get too much of a good thing—especially is this true of competition."

"There is no escape from the conclusion that pricing practices vary from firm to firm and over time. Broad generalizations are almost certain to be incorrect generalizations." p. 198

"As indicated, quality changes often are an escape from the futility of changing price. They serve as a safety value whereby aggressive sellers may make their bid for success without influencing price. To this extent, quality changes contribute to price stability." p. 204 "As indicated, pressure to get ahead by improving the quality of one's product has contributed substantially to rising living standards." "An improvement in a product selling at a given price is substantially similar to a reduction in price of a product of unchanged quality". p. 205 "Firms that are driven out of business by price war are not necessarily the least efficient in the industry. Survival in an out-and-out price war depends almost exclusively on the ability to withstand losses... Might scarcely makes right in any sphere, and certainly not in business." p. 260

Concerning market-controlled prices (see page 175) Theodore J. Kreps says:

The fact emerges clearly that market-controlled prices are neither necessarily reasonable prices nor just prices, for they are an essentially haphazard result of all the various divergent producer-and-consumer-decisions about alternatives. They may be fantastically high as was the price of tulips in the conservative Netherlands during the tulip mania, or the price of Florida real estate and of common stocks in the twenties.

If one applies what may be called social tests, prices frequently have no relationship to human needs, for those without money have no influence at all on amounts, prices, or kind of items produced and distributed except as they are beneficiaries of private or public charity. By following market value producers supply luxuries in abundance and even the extravagant futilities of Palm Beach, while one-third of the nation has no little food to eat, and such inadequate clothing and shelter that infant mortality, morbidity, and disease rates exceed those of Europe, the farmers all the while getting prices so low that crops are allowed to rot in the fields. Market-controlled prices gave Milton less than \$100 for the seven years of labor that produced the manuscript of Paradise Lost and starved the marvelously productive Franz Schubert into premature death at the age of thirty-one.

Market-controlled prices may be destructively low. They condemn women and children to break their bodies in sweatshops, in factories and in coal mines at demoralizing and crime-generating wages having not the slightest relationship to efficiency or productivity or anything save ruthless exploitation of hunger and need by avarice.

Still one further charge must be made, because market-controlled prices sometimes produce chaotic rivalry as in the coal industry and lead eventually to destruction of competition by cartels or monopoly... They involve consequences so unpalatable to producers that they resort to a number of devices which destroy the market, notably discrimination, rate wars, tying contracts, bogus independents, dumping, "freezing out" small or incipient competitors and other guerrilla tactics whereby prices and price changes, actual and implicit, are managed in order to gain or hold control...

¹Kreps, Theodore J. (Professor of Business Economics, Graduate School of Business, Stanford University) in Economic Problems in a Changing World—Willard L. Thorp, editor, 1939, p. 263.

V. W. Bladen, Professor of Political Economy, University of Toronto, discussing "Wheat and the Price System" 1 says:

Our discussion of the wheat economy has taken us into a world very different from that of our model price system of Chapter III. It is however, similar in that the unit for production is generally the family, and in that the number of small producers is so great that the condition of competition is achieved. No farmer can hope to influence the price of wheat by reducing his acreage or withholding part of his crop. But the contrasts are obvious, especially in the results. The nice adjustment of production to consumption at a price which gives the producers an income roughly equal to that of other producers, which we found in the model, is noticeably absent in the real wheat economy.

The national money income of Canada declined from some \$5,000 million in 1929 to little over \$2,500 million in 1933. Not all of this can be explained by reference to wheat alone. However, a decline of Saskatchewan farm incomes by nearly \$200 million might account, through the Keynesian multiplier. to a total reduction in the national income of \$700 or \$800 million.2

Between 1929 and 1933 the price of wheat fell about 66 per cent while the average fall in prices of a large sample of "things farmers buy" was only 25 per cent and many important items fell less than that.3

"But the price system was not left to do its worst; attempts were made by the Dominion government, some of them relatively ineffective, to raise the income of those farmers who had wheat to sell."4

We are suggesting here that the Dominion government:

- Does not believe that man's fate should be left to the blind impersonal forces of prices determined by supply and demand.
- The government also interferes with the market price when there is only one producer, for example, public utilities regulation.
- The government interferes with competition in sanctioning Labor Unions. In the economic sense, labor unions are monopolies but they are removed from the stigma of restraint of trade by law, and the government by setting the rules for collective bargaining assists labor unions to set aside competitive prices.
- The government of the Province of Ontario interferes with the establishment of competitive prices for milk through the operation of the Milk Control Board of Ontario. "It is an offence to sell milk for less than the established price."1

THE RETAIL DRUG INDUSTRY IN CANADA

The retail drug business in Canada is carried on through approximately 4200 retail pharmacies. Each pharmacy carries from 7,000 to 15,000 different items. About 20 per cent of these are marketed under resale price maintenance. In no other field is there so many trade-marked and branded items. These trade-marked and branded items are marketed under the market situation called imperfect competition as described on page 177, that is, a market situation in which there are so many producers but each producer attempts to differentiate his product slightly from those of his competitors, the extent of differentiation being sanctioned and protected by the Federal Government by means of trade-marks and the registration of brand names.

¹Bladen, V.W.,-An Introduction to Political Economy, 1948, p. 116.

²Ibid,-p. 119.

³Ibid,—p. 120. ⁴Ibid,—p. 124.

What has been said, pages 170 and 171, concerning Effective or Workable Competition applies here, namely, competition among sellers even though imperfect, may be regarded as effective or workable if it offers buyers real alternatives sufficient to enable them, by shifting their purchases from one manufacturer's brand to another. The existence of adequate alternatives is easily verified by a cursory glance at the shelves of almost any pharmacy.¹

RESALE PRICE MAINTENANCE AS AN AID TO SHOPPERS

"Purchase should be a casual venture, not a technological ordeal, according to Walton H. Hamilton, formerly Professor of Law, School of Law, Yale University.2

In laissez-faire economics the determination of prices in a competitive market by the forces of supply and demand is conditioned by two factors, full employment and rational behaviour. By rational behaviour is meant that the customer knowingly always acts in his own self-interest. This may have been true in Adam Smith's time when the world was peopled by small independent businessmen of about equal wealth and the number of different kinds of goods to be purchased was relatively insignificant in terms of the vast multiplicity of goods offered for sale today.

As physics, chemistry, biology, bacteriology were one after another absorbed into the industrial arts, the processes of production became numerous, complicated, unlike in kind. Only the expert could know the quality of the ware, and even he might have to employ test-tubes and instruments of precision in order to be sure. This situation, this trend, exposed the consumer to an increasing ignorance of the articles of use. The consumer is an amateur; he knows next to nothing about the multiple of processes and the multiplex of ingredients which lie implicit within a commodity. He cannot judge whether the consumption of an article contributes to his personal well-being. But even if every man were the omniscent Olympian which the philosophers of the nineteenth century assumed him to be, it would seem to be ridiculous for each individual to have to solve for himself the problems which all are required to face. . . An agency should act for all who are buyers; minimum standards should be set up for the admission of foods and drugs to the market.3

Two agencies have been established for the facilitation and protection of the consumer. One is the establishment of standards by the Food and Drug Act the other is the establishment of brands by manufacturers. The manufacturer who identifies his merchandise by a brand assumes the responsibility of maintaining the quality. A customer who buys by brands reflects any dissatisfaction directly in his or her purchases. Brands encourage repeat sales. The customer does not have to go through the ordeal of decision every time she buys another

The number of brands of selected items purchased by families in greater Milwaukee in 1930 were tooth brushes 256; tooth paste 76; toilet soap 65; mouth wash 68; shaving cream 73; fly and bug killers 61.—Recent Social Trends, Report of the President's Research committee on Social Trends, 1933, p. 876.

In 1937 at the Hearings on the Miller-Tydings bill, E. L. Newcomb, Executive Vice President of the National Wholesale Druggists' Association, testified that there were 200 brands of tooth paste on their list and that a complete enumeration would probably exceed 1,000; also that partial listings a few years ago for face powders and laxatives carried 1,200 and 2,000 brands respectively.—75th Congress, 1st Session on H.R. 1611, Serial 1, January 27-29, 1937, pp. 26, 58.

²Hamilton, Walton H.—Introduction to "Food and Drug Legislation" by Stephen Wilson, 1942. ³Ibid.

unit. Brands provide protection against substitution and facilitate the introduction of new items.¹

It facilitates shopping if a fairly stable price goes along with a brand name, whether national or private brand. One can buy the Toronto *Star* for three cents or the *Globe and Mail* for 5 cents. One can buy Pepsodent toothpaste for 33 and 60, Listerine for 33 and 55, MacLeans for 43 and 69, Tamblyn's for 33 or Klenso (Rexall product) for 39 and 59.

Just after the close of the Civil War in the United States, John Wanamaker initiated the one-price system. Previous to this prices were arrived at by means of a bargaining process between the customers and the salesperson. "No prices were displayed on the merchandise, and the customer, upon being told the price of an item, would endeaver to higgle and beat down the price, while the salesclerk tried to keep it as high as possible, and still effect the sale. Wanamaker changed all this and caused price tags to be placed on all merchandise, which prices were the only ones at which the merchandise would be sold at any given time. The higgling procedure was abandoned... Although there was considerable opposition to this change, both from customers and other stores, in a relatively short time it became the standard practice in department stores as well as in most of the rest of the retail field."

No one would suggest that we go back to "higgling" for price each time a purchase is made. The world's work would not get done efficiently if customer and salesclerk had to waste so much time. Retailing has moved forward since the establishment of the one-price policy instituted by John Wanamaker. It has moved another step forward with the establishment of resale price maintenance in every major capitalistic country of the world. It makes it easier for the customer to shop. "Purchase should be a casual venture."

One of the greatest retail merchants of the twentieth century, the late Edward A. Filene of William Filene and Sons of Boston, said, "Buying at a fixed price is by far the most advantageous method of buying all things in general use."

Concentration of the entire stocks in three price lines will greatly increase sales, because it will bring as much better values in the higher-priced lines of goods, as the low-price variety chains offer in the lowest prices. Buying at a fixed price is by far the most advantageous method of buying all things in general use. Stocks turn faster, customer selection will be simplified, and selling-time and effort reduced. The model stock plan is one type of standardization in retailing which will greatly increase sales, reduce distribution costs, and increase profit, because it enables the merchant to offer incomparably better values, complete stocks, and widest selections with a resulting quicker turnover. This greatly increased buying power in the three price lines will induce manufacturers to offer greater values in merchandise, because additional savings are made possible through production planned to sell at fixed prices.⁴

Resale price maintenance prevents the "misleading" of the public by the use of "loss-leaders". This practice is designed to make the customer believe that all goods sold in the "loss-leader" stores are lower than other stores. If customers would buy only the loss-leaders at such stores, such stores would

¹Whenever science develops a new invention like the radio, or a new improvement in a familiar article, the facts about it are spread to the most remote corners of the country in a few months. From such advertisements consumers learn of new commodities and improvements, and of new uses for old commodities. They learn what foods contain certain vitamins; what soaps are made of vegetable oils, what automobiles have floating power, safety glass, or knee-action springs. They obtain a basis for discriminating among various brands of the same commodity.—George Burtin Hotchkiss in An Outline of Advertising, p. 80.

²Baker, Harold A.—Principles of Retail Merchandising, 1939, p. 160.

³Filene, Edward A.—Next Steps Forward in Retailing, 1937, p. 108.

⁴Ibid,-p. 108.

soon be out of business. They must make up the difference on some other goods the value of which is unknown to the customer. As Louis D. Brandeis said, "price-cutting paves the way to monopoly".

The following statements by A. & P. executives made during the criminal antitrust suit decided against A. & P. in 1943 are indicative:

... It might be necessary for us to operate unprofitably for several weeks . . . prior to the time the competitor plans to open so that the people in the community will be impressed with our low prices and will continue to shop with us after the competitor has opened shop.¹

. . . Whenever we get wind of the opening of one of their stores now we set up a special program three weeks ahead of time, so that by the time they are ready to open their doors for business there isn't very much they can do to entice trade from us.²

Resale price maintenance helps to prevent the growth of chain store monopoly.

Chain stores doubtless tend to divest a town of its local economic autonomy. Like big business generally, then tend to make a town or city merely as economic colony of the great financial centers from which the chains and mail-order houses are controlled, a colony inhabited partly by employees of the chains who do not have the same pride and interest in the community that independent storekeepers do. Again like our big, highly integrated business enterprises, the chains are efficient; but they tend to centralize wealth and economic control, to make hired men of some who once had the opportunity for modest individual entrepreneurship, and to rob the community of local leadership, dignity, pride, and responsibility. Whether their price economies are compensation for these losses is a matter of individual judgment.

Our general conclusion as to chain stores perhaps should be that it would be unfortunate if they were driven entirely out of existence, and equally unfortunate if they should take over the retail field completely. If there were no chains, some independent retailers would build up local monopolies to exploit consumers, just as some of them did before the chains appeared. On the other hand, if the chains controlled the retail field entirely, they might combine in another form of monopoly. The present competition between chains and independents is healthful for both of them.³

Many States in the United States have laws designed to prevent the use of loss-leaders.

Legal control of resale prices has also been sought in recent years in the United States by a prohibition of sales below cost. Thirty states have such laws generally applicable to wholesale and retail sales. They are variously designated as Unfair Practices Acts and Unfair Sales Acts. They may be referred to also as Anti-loss-leader laws because an article Items of known quality are chosen for sale below cost as loss-leaders. In addition, Michigan has such a law limited to bakery products and petroleum products, and Ohio has one covering only cigarettes.

These state laws were all passed in the decade immediately preceding World War II. There is no Federal law prohibiting sales below cost. The justification for such enactments is that, under ordinary circumstances, a sale below cost is necessarily deceptive. No wholesaler or retailer can continue indefinitely in business if he sells below cost. If he

¹Quoted by Edward M. Brecker in "Government vs. A. & P. Consumers Reports, published by Consumers' Union, January, 1950,, u. 37.

⁸Ise, John-Economics, p. 329.

regularly sells some items for less than cost, the selling prices of the other articles in his establishment must be high enough not only to cover costs on them, but also to pay the losses on the articles sold below cost. Items of known quality are chosen for sale below cost as loss-leaders. The customer usually has no way of knowing the extent to which unknown and non-standard articles are overpriced.1

Resale Price Maintenance Strengthens Competition

"Pressure to get ahead by improving the quality of one's product has contributed substantially to rising living standards. An improvement in a product selling at a given price is substantially similar to a reduction in price of a

product of unchanged quality".2

Pharmaceutical manufacturers spend millions on research to improve existing products and to discover new ones. "The installation of a new facility, a radioisotope laboratory at the research laboratories of E. R. Squibb & Sons, New Brunswick, N.J. was announced yesterday by Dr. A. F. Langlykke, director of research and devolopment . . . Functioning primarily in service of other research departments, the laboratory will use isotopes as tracers in helping to determine the action of new drugs".3

In 1948 a new wonder drug Chloromycetin, was discovered by Dr. Paul Burkholder, a Yale botanist. It is made of microbes found in samples of soil obtained from Caracas, Venezuela. On March 27, 1949, Parke, Davis and Company announced the successful synthetization of Chloromycetin. It is a specific for typhus fever and has been successful in the treatment of other

diseases as well.

The governments of all capitalistic countries grant patent rights and trade-marks to these great companies that they might recover their research costs and go on to further developments. The manufacturer has the right to set his own prices to the wholesaler. In many cases he suggests the minimum retail price. It seems reasonable that if the manufacturer is allowed to set prices so that he can recover costs and a reasonable profit that the pharmacist who maintains a public health station and occupies an unique position in retail trade should not be allowed to likewise recover his costs plus a reasonable profit without the interference of the predatory price-cutter.

As evidence that these manufacturers actually reduce their list prices, and hence the retail price to the consumer, as they are able to devise chemical processes and equipment to produce the substance on a large-scale, low-cost

basis Merck & Co. Inc. reduced the price of

Cortisone 90 per cent in two years Vitamin B12 96 per cent in two years Streptomycin 97 per cent in five years

Further Sodium Penicillin, 100,000 units, vials, each, dropped from prices

ranging from \$1.20 to \$2.50 in 1946 to 30 cents in 1949.

In modern manufacturing, a firm's level of costs per unit of product is influenced considerably by its scale of output.4 It would be futile to set resale prices at levels that would not clear their outputs through the channels of distribution.

The manufacture and distribution of drugs and pharmaceuticals is essentially competitive. Anti-trust and anti-monopoly laws sometimes even tend to prevent the economical production and marketing of goods. On January 29,

¹ Olsen, Paul C.-Marketing Drug Products, 1948, p. 38.

² Oxenfeldt, A. R., op. cit., p. 205.

³ New York Times, November 11, 1951.
1Lester, Richard A.—Shortcomings of Marginal Analysis for Wage Employment Problems,
American Economic Review, Mar., 1946, Vol. 36.

1951 Federal Judge William F. Smith opened the way for mass production of cortisone to bring the cost within the reach of most arthritis victims. The new order will permit the companies, Schering Corporation of Bloomfield, Organon, Inc., of Orange, Ciba Pharmaceutical Products Inc., of Summit and Merck & Company Inc., of Rahway, and Research Corporation of New York to execute an agreement to pool their cortisone patents and to license the patents to other manufacturers. The Department of Justice reserved its right to prosecute any antitrust violations that may occur in the pooling and licensing operations.¹

Sixty per cent of the pharmaceuticals on the market today are new since 1945. These products originate from research. Thirty-five million dollars was spent on research in 1949 and this is a conservative estimate. Pricing problems for manufacturers of new products are tough. New products develop rapidly to take the place of the old. The expected life of the product must, therefore, be taken into consideration when setting the price. Sometimes development costs must be taken out in a hurry. Manufacturers must maintain adequate channels of distribution if these new and often life-saving drugs are to be marketed. Stable and organized channels must be established as part of the manufacturers marketing policy. As Grether has shown, "Under former circumstances the most strongly entrenched manufacturers often were able to obtain dealers' services for little or no reward, or even enjoyed a begrudged subvention; now dealers demand that the brands of these manufacturers pay their way".²

It is a well established fact that few pharmacists could survive if their sole business consisted of pharmaceuticals and the dispensing of physicians' prescriptions. The pharmacist must sell many other products such as proprietary medicines, household remedies, toilet articles, and others in order to defray his expenses so that he can maintain a public health station for pharmaceuticals and the dispensing of physicians' prescriptions when occasion demands. If he must compete with cut-throat competition of chains and department stores in the sale of many of these items he must charge a higher price for his professional services else go out of business. If many pharmacists are forced out of business many communities would be without the services of pharmacists entirely. Department stores and grocery stores that sell a limited line of drug store items are not open in the evenings, holidays, Sundays, nor do grocery store selling such wares perform the professional services of the pharmacists.

Hence resale price maintenance aids in the maintenance of adequate pharmacies with adequate stocks of pharmaceuticals and prescription services in each community and is an invaluable asset to every community. This problem was recognized hundreds of years ago when in the beginning of the seventeenth century, the Lord of the County of Schleiz gave an order to the Council of Schleiz to make the merchants and pedlars obey the laws and "not to seize this valuable and useful jewel for town and country and thereby damage it for the apothecary" but much more to be satisfied with the articles which they are authorized to carry.

¹New York Times, January 30, 1951.

²Grether, E. T.-Price Control Under Fair Trade Legislation, p. 294.

^{3&}quot;In dem 1585 Joachim Kestner in Landsberg a.w. angstellten Apothekenprivileg wird das Verbot des Materialien-und Gewdrz-handels sowie des Wein—und Aquavitausschanks ausserhalb der Apotheke damit begrundet, dass letztere "von den Medizinalein night leben konne." Anfang des 17 Jahrunderts befiehlt der Landesherr des Herrschaft Schleiz dem Schleizer Rate, die Kramer und Storer "Dazu anzuhalten, der Apotheke" diesem kostbarlichen und gemeinen Staft und Land sehr nutzbaren Kleinod keinen Eingriff zu tun and dadurch in Verderben zu setzen," sich vielmehr an denjen Stucken, die sie zu fuhren befugt sind, genugen zu lasen."—Adlung A. and Urdang, G.,—Gundriss der Geschichte der Deutschen Pharmazie, p. 101.

The results of more than ten years' permissive resale price maintenance in the United States has had a dramatic effect and produced a marked change in the drug store itself. There has been a marked drop in "tonnage". Chiefly responsible for this drop are four departments, namely, fountain, confectionery, liquor-wine-beer, and tobacco. On the other hand today health departments produce more than 50 per cent of total store sales for the first time in decades. This is as it should be. Of all drug store departments the biggest gain in dollars was shown last year by prescriptions; the biggest gain in percentage was manifested by first aid goods.¹ There is a compensatory action here for as the pharmacist regains his rightful position and prestige in the community and eliminates departments not logically allied to pharmacy other retailers receive the business the pharmacist gives up.

It has been said that resale price maintainance denies the right of those customers who do not wish the services offered by service stores to obtain goods at a lower price. On the surface there appears some truth in this statement but we have already shown that when some goods are lower priced others must be, and have been, overpriced, with a resulting overall no gain to the customer or society. Even if so it would not be sufficient reason to upset present marketing arrangements and would have no effect on reducing the cost of living which is the stated purpose of the government in requesting anti-resale price maintenance legislation. Those who advertise "cut prices" cut only certain articles to attract trade. If their expenses are lower than others they should be forced to sell ALL merchandise at lower prices. However, it has not been shown that there is any marked difference among retailers in the costs of running a business.

A recent study of operating costs in Fair Trade and Non-Fair trade areas (Fair Trade is the term used in the United States for resale price maintenance) showed:

- 1. The operating costs of drug stores in the Fair Trade states are $26\cdot17$ per cent of sales; whereas the comparable cost for drug stores in the non-Fair Trade area is $27\cdot57$ per cent of sales.
- 2. The Fair Trade drug stores show a better efficiency record of 1.4 per cent of sales; but, expressed in terms of comparison as between stores in the two areas, those in the Fair Trade states are 5.35 per cent more efficient than those in the non-Fair Trade area.
- 3. The operating efficiency of drug stores throughout the country—taking both areas—is considerably lower than that of many large retail establishments which depend on loss leaders to attract patronage. (Incidentally, the continuing studies of the Harvard Graduate School of Business Administration show that the operating expenses of all department stores in the United States, as an average, was 31·15 per cent of sales in 1948.)

The operating expenses of H. R. Macy & Co. of New York increased from 13.65 per cent in 1888 to over 30 per cent in 1930.2

¹Current Research Studies On Fair Trade, p. 5 (Complete study attached).

²Phillips, Charles F. and Duncan, Delbert J.,—Marketing, Principles and Methods, p. 14.

OPERATING EXPENSES OF CHAIN STORES AND ALL STORES IN SELECTED FIELDS $1935^{\rm t}$

Net Sales equal 100 per cent

Field	Chain	All Stores
Average	24 · 9	22.9
Grocery Grocery and meat General Merchandise Department Store Variety Men's Clothing and furnishings Shoe Automobile Accessory Filling station Drug (with fountain)	$\begin{array}{c} 16 \cdot 7 \\ 17 \cdot 4 \\ 22 \cdot 9 \\ 23 \cdot 1 \\ 26 \cdot 9 \\ 29 \cdot 7 \\ 29 \cdot 7 \\ 30 \cdot 0 \\ 30 \cdot 0 \\ 26 \cdot 7 \end{array}$	12·8 14·9 20·7 29·2 26·6 26·8 27·9 28·9 18·1 23·9

Source: Census of Business; 1935, Retail Chains (1937), pp. 33-37, and Retail Operating Expenses (1937) p. 8.

SALES AND OPERATING EXPENSES OF CHAINS COMPARED WITH ALL OTHER STORES BY SELECTED KINDS OF BUSINESS, 1935²

	D. G. I	Operating
	Per Cent	Expenses:
Kind of Business	of Total	Per Cent of
	Net Sales	Net Sales
United States Total—all kinds of business		27.5
Chains		25 · 0
Independents and all others		28 · 3
Independents		$28 \cdot 4$ $26 \cdot 2$
All others	4.1	20.2
Groceries (without meats)	0 5	47.0
Chains		15.6
All others	4 · 1	22 · 8
Combination stores (groceries and meats)		
Chains	4.9	17.5
All others	7.6	19.0
Department Stores—		
Chains	$2 \cdot 7$	$24 \cdot 7$
Mail-order (catalog only)		$23 \cdot 7$
All others	6.1	$32 \cdot 2$
Variety stores—		
Chains	2 · 1	27 · 2
All others	. 0.2	$26 \cdot 5$
Men's clothing-furnishing stores—		
Chains	0.4	31.0
All others		28.5
Women's Ready to wear—		
Chains	0.6	28 · 8
All others		28 · 9
	1 0	200
Shoe Stores—	. 0.8	29.6
Chains All others		28 · 9
All others	1 0	20 3

¹Ibid, p. 222.

^{*} No allowances included for proprietor's salary in unincorporated enterprises.

²Stewart, Paul W. and Dewhurst, Frederic,-Does Distribution Cost Too Much? pp. 138-9.

	Per Cent	Operating Expenses:
	of Total	Per Cent of
Kind of Business	Net Sales	Net Sales
Filling Stations—		
Chains	1.3	29 · 9
All others	4.6	25 · 4
Furniture Stores—		weds
Chain	0.3	$36 \cdot 3$
All others	4 0	34.6
Restaurants, Cafeterias, Lunch Rooms-		
Chains	$0 \cdot 7$	54.5
All others	$4 \cdot 3$	49.2
Jewelry stores—		
Chain	0 · 1	49 · 1
All others		41.2
Drug Stores—		
Chains	0 · 1	26 · 1
All others		28 · 1

The above figures from Does Distribution Cost Too Much? were compiled by the Committee on Distribution of the Twentieth Century Fund who employed a special research staff. The work as a whole is the most comprehensive study of the costs of distribution ever made in North America. The figures reveal that only grocery stores, variety stores, and filling stations (independent) have lower operating costs than independent drug stores. I doubt very much that the community wishes its medicines distributed through such outlets. Further, chain drug stores accounted for nine tenths of one per cent of the total national retail trade at a time when very few states had Fair Trade laws. However, chain drug stores accounted for approximately twenty-five per cent of the total retail drug business and their cut price tactics seriously threatened the future of many independents.

Resale Price Maintenance Reduces the Cost of Living

If goods in the 'free market' had not gone up any higher than prices of goods sold under resale price maintenance, today, there would be no such problem as the one now confronting our government concerning the cost of living.

We present as evidence the results of various studies:

TABLE 2

PRICE INDEXES OF FIFTY LEADING DRUG STORE ITEMS BEFORE AND AFTER DISTRIBUTION UNDER FAIR TRADE CONTRACT FOR CHAINS AND VARIOUS SIZES OF INDEPENDENTS

List Price Equals 100

Size Store type (annual volume)	Before Fair Trade	1939	Change
1. Independent—less than \$10,000. 2.	93·1 92·7 91·7 90·6 85·8 78·6	90·6 89·3 88·2 87·3 85·4 83·5	$ \begin{array}{c} -2.5 \\ -3.4 \\ -3.5 \\ -3.3 \\ -0.4 \\ 4.9 \\ \hline -0.9 \end{array} $

Ostlund H. J. and Vickland, C.R.-Fair Trade and the Retail Drug Store, 1940, p. 11.

How Fair Trade Has Checked Price Increases2

Drugs and toiletries sold under Fair Trade contracts have increased in price by only 1.39% from 1939 to June 1, 1947, according to a thorough survey made by the National Association of Chain Drug Stores. When the increase in prices is weighted according to the public's actual purchases in drug stores, the rise in prices from 1939 to 1947 stands at an average of only 3.12%.

The study is based on Fair Trade minimum prices of 7,334 drug and toiletries items, sold in drug stores, which were on Fair Trade in 1939 and still are on Fair Trade. These items are unchanged, in size and quality, since 1939 so the price comparison is accurate. These items are from 250 manufacturers. The 250 manufacturers account for approximately 85 % of all Fair-Traded drugs and toiletries sold in chain drug stores.

The cost of purchasing one of each of these items, at Fair Trade retail prices, in 1939 would have been \$14,403.29. The cost of purchasing one of each of the same items at Fair Trade retail prices on June 1, 1947, would have been \$14,603.56. Thus the net increase in the price of all of these 7,334 Fair Traded items has been only \$200.27 or $1\cdot39\%$.

Comparison between 1939 and 1947

Food up 103.7%	
Apparel up 85.1%	
House Furnishings up 81.5%	All items
Rent up 4.7%	ир
Fuel, ice, electricity up 20.7%	
Miscellaneous up 38.5%	,0
Fair Trade Prices on Drugs and Toiletries up	3.1%

The National Association of Chain Stores engaged Joseph A. Fletcher, consultant, to make an impartial study.

	Items	No Change	Down	Up
Drugs	4299	2674	340	1205
Vitamins		93	269	93
Cosmetics	1814	1213	61	540
Toiletries	541	356	22	163
Miscellaneous		41	5	179
Summary	7334	4377	697	2260

Drug Store Fair Trade Prices Up Only 7.4% as Others Soar 14.8%

Prices of fair traded merchandise in the drug store have risen only 7.4% in the past 35 months, or exactly half the 14.8% increase registered by consumer goods in general.

This was revealed last week by the Bureau of Education on Fair Trade when it released the results of a survey conducted for the Bureau by McKesson & Robbins.

Products included in the comprehensive study represent more than 90% of the drug store sales, exclusive of fountain, tobacco, and magazine volume.

Non-fair traded drug store items increased 13.3% from January 1, 1947 to December 1, 1950, or almost at the same rate as the consumer price index.

¹Chain Store Age, October 1947.

"Covered in the study were the lines of

- 53 Pharmaceutical manufacturers
- 51 proprietary manufacturers
- 51 toiletry manufacturers
- 74 sundries producers

whose total volume represents more than 90% of the \$2,400,000,000 worth of business done in the drug stores"...

These figures are not subject to most of the limitations (before and after legislation, between geographical areas where price maintenance is legal and areas where it is not, differences in class of store, size of community, income of class of neighborhood, and spotty sampling of a limited number of articles as 54 and 117) as are those of Grether and Oxenfeldt.

Reinhold P. Wolff contends that fixed retail prices in Europe have not raised general price levels, nor created price uniformity to any considerable extent, nor prevented the growth of large-scale retailing.1

"To the opponents of fair trade the most disturbing findings of the surveys, findings that they seem to prefer not to discuss, are the following:2

- 1. The prices of drug products sold under fair trade have, on the whole, been lower in fair trade states than in non-fair trade states.
- 2. Fair-traded articles have risen less in price than non-fair-traded articles.
- 3. Fair-traded articles have risen a very small fraction of the general rise in cost of living. Here is really dramatic evidence. In the period 1939-1950, while the cost of living was rising 76 per cent, the cost of non-fair traded drug items rose 29 per cent but the cost of fair-traded drug items rose only 10½ per cent."

Since Oxenfeldt's book "Industrial Pricing and Market Practices" is the only evidence quoted by the Committee to Study Combines Legislation in its Interim Report to support its view that resale price maintenance increases the cost of living, we submit that the only statement to that effect that we can find in the book is found on page 429, as follows: "Both facts reinforce the slender empirical evidence that shows average retail prices to have been increased by resale price maintenance.

The popular notion is that resale price maintenance is "pricefixing." Such is not the case. The prices established by the Milk Control Board of Ontario is an illustration of price fixing. The Board fixes the price of all milk regardless of the producer or the distributor. No distributor can deviate from the established price without the penalty of the law. Adequate alternatives do not exist. A mother's only alternative is canned milk which may not be suitable for her baby. An adult has various alternatives to choose from. Under resale price maintenance, a producer of a trade-marked or branded article only may

¹Wolff, Reinhold, P.,—Price Control under "Fair Trade" legislation, Round Table, The American Economic Review, Vol. XXX, No. 1, Supplement, March 1940, pp. 115-117.

²Perry, Kenneth—"The Fair Trade Situation Today" in the Journal of the American Pharmaceutical Association, Practical Pharmacy Edition, Vol. XII, No. 10, October, 1951, p. 619.

or may not, depending on his marketing policy, set the price of the things he produces. He does not in any sense set the price of other producers. (see page 25) The consumer has a choice among many brands at a variety of prices. Price fixing usually raises the cost of living. Resale price maintenance does not.

It is natural for people to assume that if the retailer likes resale price maintenance, it must be because he is able to get higher prices. It has been shown that this is not true. Retailers do not get higher prices under resale price maintenance. They, however, get higher margins from the manufacturer than formerly. If a product is subject to severe cut-pricing, the non cutters put it under the counter and push other goods. This reflects eventually on the sales of the manufacturers. If the manufacturer can show the retailer that the price will be maintained and the retailer can earn a normal margin, the retailer will promote its sale and as a result the manufacturer will increase his volume. It is the expectance that volume will be increased with dealer co-operation which makes the manufacturer willing to grant adequate margins. Margins are not profits to the retailer. They are income. His demand that manufacturers allow him an adequate income for his services is similar to labour unions bargaining collectively with employers.

Oxenfeldt states:1

Oxenfeldt, A. R.-op. cit., p. 428.

If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated, manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:

... reductions made by some druggists in prices of some pricemaintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.

The key words in the above quotations are change and margins. To say that if distributors' margins changed there would be a parallel effect on prices to the consumer is only to say that there was a change in consumer prices. The quotations go on carefully to say "that retailers, after reducing prices. . ." This is not saying prices went up to the consumer as the Interim Report implies. Distributors' margins could go up and consumer prices down and the changes would still be parallel

Before Fair Trade		After Fair Trade	
	consumer		consumer
	prices	,	prices
	retailer's		retailer's
	cost		cost

Margin is the difference between the two lines

E.T. Grether appraises the situation correctly when he says,

Although the movement for the control of price competition arises out of conflicts within industry and trade and finds its deepest meaning in the play of these forces, the public presentation of the case for and against it are often couched in terms of consumer welfare.¹

The unique aspect of the present movement is the bargaining juxtaposition of manufacturers with monopoly rights in their brands and organized retailers...²

As the biographer of Louis D. Brandeis has recorded,

It (the Supreme Court Decision against price maintenance in 1913) was widely applauded by consumers, who felt that price maintenance was a device of monopoly, born of desire to make them pay more; by merchants, who felt they had a right to set their own selling price on articles they bought; and by anti-monopolists, who considered price-fixing a tool on monopolistic oppression. Brandeis was certain that both Court and people were unwittingly fostering the thing they wanted abolished—monopoly. Confusion had resulted, he believed, from.inadequate knowledge of the facts.³

Discriminatory Effects of Anti-resale Price Maintenance Legislation

The Committee to Study Combines Legislation in its Interim Report recommended "that it should be made an offence for a manufacturer or other supplier:

1. To recommend or prescribe minimum resale prices for his products." This would be discriminatory. It would permit to the owners of Private Brands what it would deny to the owners of National Brands.

Many manufacturers own their own retail stores. Some retail stores organizations own their own manufacturing plants. There is both backward and forward integration. According to the suggested law Rexall Drug Inc., manufacturers and owners of their own chain of stores the L. K. Liggett Stores could not determine the minimum prices at which their own merchandise would be sold in their own stores. Hundreds of pharmacists are Rexall agents. According to the suggested law they would be able to sell Rexall products at prices lower than the Liggett Stores. There are many other like situations.

Department stores, and others who own but do not manufacture, their own private brands, as owners could set minimum prices while owners of national brands would be denied a like privilege.

Comment on Maximum Prices

In its Interim Report, the Committee state, "It is to be noted that the Committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum. It follows that suppliers would be free to suggest and enforce maximum resale prices." The Committee further states that "it is useful to compare these recommendations with the British proposal . . ." The "maximum" price idea is contained in the British proposal.

We find it difficult to reconcile the logic of this notion with the logic of the rest of the report. It would be lawful for a manufacturer to set

¹Grether, E. T.,—Price Control Under Fair Trade Legislation, p. 294. ²Ibid, p. 311.

³Mason, Alpheus Thomas,-B randeis A Free Man's Life, p. 424.

maximum prices but unlawful for a manufacturer to set minimum prices. Further the manufacturer is to be given the power to enforce maximum prices. This would give the manufacturer unlimited power. He now has the power to set the prices at which he sells to the retailer. If he could also set the maximum prices the retailer could sell at, he could definitely prescribe the maximum margins of the retailer. The retailer could be "squeezed" from both ends. We would be exchanging "cut-pricing" for "black-markets."

Summary

Effective competition is the desired norm—not pure competition. Adam Smith's economics knew nothing of the baffling problems that our machines have created. The early pioneer had only a few rather simple problems to solve; but today's interdependance of men, of classes of men—pounding engines and whirling wheels—corporations, holding companies, and industrial empires have created problems that Adam Smith never dreamed of happening.

"Exchange effectuates the trading of equivalents only when the powers behind the exchange are equivalent. The relations of supply and demand remain important, to be sure, not because they determine price, but because they strengthen or weaken one side in the conflict over price"

Trade-Marked and branded goods are the only types of goods that can be marketed under resale price maintenance. They are marketed under conditions of imperfect competition which is essentially competitive because there are many producers and the consumer has adequate alternatives. "Business decisions today are predominately competitive in orientation." The financially powerful are not necessarily the most efficient. Likewise, size alone is no measure of efficiency. Resale price maintenance strengthens the side of the independent retailer in the conflict over price with the manufacturer.

It has been shown in the preceding pages that resale price maintenance assists the consumer in making shopping a venture not a technological ordeal, that it provides orderly channels of distribution providing the retailer with an adequate share in the national income in return for the services he performs both for the manufacturer and consumer, that it fosters competition, and that it reduces the cost of living.

The pharmacists of Canada are not asking for a privilege. They are asking for the freedom to enjoy a right commonly enjoyed in the leading commercial countries of the world.

Conclusion

Louis D. Brandeis, who took up the fight in the United States for resale price maintenance lived to see the Supreme Court which in 1913 ruled "that manufacturers of patented articles could not fix the price at which retailers sold their products to the consumer" reverse that decision with the words (among others):

The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself . . .

We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity, for which the brand or trademark stands. Appelants own the commodity; they do not own the mark

¹Gambs, John S.→Beyond Supply and Demand, 1946, p. 14.

²Dean, Joel,—(Graduate School of Business, Columbia University) Managerial Economics, 1951, p. 47.

or good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation.

In a decision in Superior Court in Montreal on November 14, 1951, Mr. Justice Elphage Marier upheld theright of the Frosst Company to refuse to deliver merchandise because the Montreal Pharmacy had sold identical products at a price lower than that fixed by the Frosst Company to the public. The judge upheld the claim that a contract existed between the parties, but found that it also contained a condition that the merchandise would besold by the retailer at a price not lower than that stated in the catalogue. That condition had been known to Montreal Pharmacy for the last 20 years . . . In any event, the court held, other products were available than those made by the Frosst Company.

A reversal of this decision by legislation to outlaw resale price maintenance would be a backward step in terms of marketing practices recognized as economically sound in all commercial countries of the world.

The preceding arguments, discussions, and data are presented for your careful consideration.

HORACE J. FULLER.

APPENDIX II

REPRESENTATIVE LIST OF DRUG STORE ITEMS SHOWING WHOLESALE LIST PRICE, USUAL RETAIL PRICE AND PERCENTAGE OF PROFIT

LIST OF NATIONALLY ADVERTISED PRODUCTS

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Per- centage Profit
			\$ cts.	\$ cts.		\$ cts.	
	AQUA VELVA WMS. AQUA VELVA WMS. BAYER ASPIRIN. BOME. AIR WICK. AIR WICK. AIR WICK. AIR WICK. AIR WICK MIST BOME. ABSORBINE JR. ABSORBINE JR. ABSORBINE JR. ABSORBINE JR. ABSORBINE VET. PABLUM MIXED CEREAL. PABLUM MIXED CEREAL. PABLUM MIXED CEREAL. PABLUM BARLEY. PABLUM BARLEY. PABLUM BARLEY. PABLUM BOATMEAL. PABLUM BOATMEAL. PABLUM BOATMEAL. PABLUM BOATMEAL. PABLUM BOATMEAL. PABLUM BOATMEAL. WODESS REGULAR. MODESS REGULAR. MODESS REGULAR. MODESS REGULAR FAMILY. KLEENEX PCCKET 1900 1 CTN. KLEENEX PCCKET 1900 1 CTN. KLEENEX PEGLASS TISSUE. KLEENEX REGULAR 200. KLEENEX MENDS 200. KLEENEX MEDS 200. KLEENEX MEDS 200. KOFEX JUNIOR. KOTEX BUNIOR. KOTEX BUNIOR. TAMPAX JUNIOR. TAMPAX JUNIOR. TAMPAX JUNIOR. TAMPAX SUPER. TAMPAX SUPER. TAMPAX REGULAR. TAMPAX SUPER. TAMPAX	5 oz. 11 oz. 128 248 1008 30 5½ oz. 16 oz. 15½ oz. 16 oz. 5½ oz. 16 oz. 12 x 16 oz. 12 oz. 33/4 oz. 75 oz. 15 oz. 5ml Med Lge 3 oz. 7 oz. 14 oz. 5ml Med Lge 4 oz. 12 oz. 5ml Med Lge 4 oz. 12 oz. 26 oz. 12 oz. 26 oz.	Retail Color	\$ cts. 6.06 12.12 1.60 2.54 7.34 2.54 7.35 11.45 15.60 14.30 11.68 1.25 22.50 22.50 22.50 2.25 4.30 2.25 2.25 4.30 2.25 2.25 3.84 3.84 14.52 4.30 0.50 12.80 10.47 3.96 15.12 3.96 12.80 14.90 2.32 4.00 15.20 2.88 5.64 9.84 3.40 6.70 10.10 3.92 7.17	2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	\$ cts. 0.51 1.01 0.14 0.21 0.61 0.21 0.61 0.95 1.30 0.98 0.10 0.94 1.87 1.87 2.21 4.21 2.21 2.21 2.21 2.21 2.21 2.21	centage Profit 21.53 22.31 26.31 27.58 22.78 27.58 22.78 27.58 21.75 21.75 21.75 21.75 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 26.9 26.33 32.65 17.31 17.31 18.07 16.45 17.64 16.45 24.0 23.25 16.10 24.0 23.25 16.10 20.77 23.23 20.06 20.9 33.33 32.3 33.04 33.15 25.0 25.39 24.77 21.62 23.28 22.72 23.35 24.05 24.05 24.05 24.05 22.72 23.33 20.83 20.83 20.83 20.83 20.83 20.83 20.83
1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz. 1/12 doz.	MILK MAGNESIA TAB PHILLIP. MILK MAG, TAB PHILLIP. MILK MAG, TAB PHILLIP. NOXEMA SKIN CREAM. NOXEMA SKIN CREAM. NOXEMA SKIN CREAM. NOXEMA SKIN CREAM HOSP. MUM. MUM. ALKA SELTZER.	Med Lge 3/4 oz. 21/4 oz. 4 oz. 14 oz. Med Lge	0.24 0.46 0.92 0.26 0.65 0.89 1.69 0.53 0.75	2.20 4.34 8.68 2.26 5.66 7.86 14.26 4.44 6.28		0.19 0.37 0.73 0.19 0.48 0.66 1.19 0.37 0.53	20.83 19.56 20.65 26.92 26.56 25.84 29.58 30.18 29.33
1/12 doz.	ALKA SELTZER	Lge Sml	$0.68 \\ 0.34$	$6.05 \\ 3.02$		$0.51 \\ 0.26$	$\begin{array}{c} 25 \cdot 0 \\ 23 \cdot 52 \end{array}$

LIST OF NATIONALLY ADVERTISED PRODUCTS-Continued

		1	1	1			
Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Per- centage Profit
			\$ cts.	\$ cts.		\$ cts.	
						• 005.	
1/12 doz.	Andrew Liv Salt	Sml	0.45	3.89	,	0.33	26.66
1/12 doz.	ANDREW LIV SALT	Lge	0.75	6.48		0.54	28.0
1/12 doz. 1/12 doz.	Bromo Seltzer	Sml	0.29	2.60		0.22	24 · 13
1/12 doz.	Bromo Seltzer	Reg Family	0.55 0.98	5.00 9.00		$0.42 \\ 0.75$	23 · 63 23 · 46
1/12 doz.	Bromo Seltzer	Dispen	1.89	18.00		1.50	20.63
1/12 doz.	Bromo Seltzer Baby Cream Jars J & J		0.65	6.00		0.50	23.07
1/12 doz.	BABY OIL J & J 5 oz	Sml	0.69	6.00		0.50	$27 \cdot 53$
1/12 doz. 1/12 doz.	BABY OIL J & J 12 oz BABY POWDER J & J	Lge	1.25	11.40		0.95	$24 \cdot 00$
1/12 doz.	BABY POWDER J & J	Sml Lge	0.33	$2.95 \\ 5.64$		0.25	$24 \cdot 24 \\ 25 \cdot 39$
1/12 doz.	BRYLCREEM JAR.	6 oz.	0.03	6.40		$0.47 \\ 0.54$	31.64
1/12 doz.	BRYLCREEM JAR LGE	13 oz.	1.23	10.00		0.84	31.7
1/12 doz.	BRYLCREEM TUBE	Med	0.43	3.60		0.30	30.23
1/12 doz.	BRYLCREEM TUBE	Lge	0.69	5.60		0.47	31.88
1/12 doz. 1/12 doz.	Buckley Mixture	Sml	0.50	4.26	,	0.36	28.0
1/12 doz.	BUCKLEY MIXTURE	Lge	$0.85 \\ 0.40$	7.14 3.96		$0.60 \\ 0.33$	17.64
1/12 doz.	Castoria	Family	0.70	6.60		0.55	$\begin{array}{c} 17 \cdot 5 \\ 21 \cdot 42 \end{array}$
1/12 doz.	ENOS FRUIT SALT	Sml	0.69	6.30		0.53	23 · 18
1/12 doz.	ENOS FRUIT SALT	Lge	1.09	9.90		0.83	23.85
1/12 doz.	DRENE	Travel	0.39	3.50		0.30	$23 \cdot 07$
1/12 doz. 1/12 doz.	Drene	Med Lge	0.69	6.20		0.52	24.63
1/12 doz.	Drene		1.09 1.19	$9.80 \\ 10.52$		0.82	$24.77 \\ 26.05$
1/12 doz.	HAIR TONIC KREML		1.79	16.08		1.34	25.13
1/12 doz.	HAIR TONIC KREML	1 1/2 oz.	0.35	3.12		0.26	25.71
1/12 doz.	HAIR TONIC KREML	4 oz.	0.71	6.30	:	0.53	$25 \cdot 35$
1/12 doz.	HALO		0.39	3.66		0.31	20.51
1/12 doz. 1/12 doz.	HALO CREAM SHAMP	4 oz. Giant	$\begin{array}{c c} 1.10 \\ 0.69 \end{array}$	$9.84 \\ 6.48$		$\begin{bmatrix} 0.82 \\ 0.54 \end{bmatrix}$	$\begin{array}{c} 25 \cdot 45 \\ 21 \cdot 73 \end{array}$
1/12 doz.	DEXTRI MALTOSE No. 1		0.80	7.50		0.63	21.25
1/12 doz.	DEXTRI MALTOSE No. 1	5 lb.	3.45	33.00		2.75	20.28
1/12 doz.	DEXTRI MALTOSE, No. 2	5 lb.	3.45	33,00		2.75	$20 \cdot 28$
1/12 doz.	DEXTRI MALTOSE No. 2	1 lb.	0.80	7.50		0.63	21.25
1/12 doz. 1/12 doz.	DEXTRI MALTOSE No. 3 DEXTRI MALTOSE No. 3	1 lb. 5 lb.	$0.80 \\ 3.45$	$7.50 \\ 33.00$		$\begin{bmatrix} 0.63 \\ 2.75 \end{bmatrix}$	$\begin{array}{c} 21 \cdot 25 \\ 20 \cdot 28 \end{array}$
1/12 doz.	DEXTRI MALTOSE YEAST	1&B1lb.	0.80	8.00		0.67	16.25
1/12 doz.	HAIR TONIC VASELINE PER-						
1 /10 1	SONAL HAIR TONIC VASELINE SOL		0.43	3.84		0.32	25.58
1/12 doz. 1/12 doz.	HAIR TONIC VASELINE SOL	4 oz.	$0.65 \\ 0.95$	5.82 8.40		0.49	$24 \cdot 61 \\ 26 \cdot 31$
1/12 doz.	HAIR TONIC VASELINE		1.15	10.32		0.86	25.31
1/12 doz.	HAIR TONIC OR VASELINE		0.43	3.72		0.31	27.90
1/12 doz.	HAIR TONIC OR VASELINE	4 oz.	0.69	6.00		0.50	$27 \cdot 53$
1/12 doz.	VICKS COUGH SYRUP		0.59	4.72		0.40	$32 \cdot 20$
1/12 doz.	VICKS INHALERS		0.43	3.60		0.30	30.23 22.64
1/12 doz. 1/12 doz.	VICKS VATRONOL		$0.53 \\ 0.53$	4.84 4.84		$0.41 \\ 0.41$	22.64
1/12 doz.	VICKS VATRONOL		0.35	3.30		0.28	20.00
1/12 doz.	VASELINE CAMPHORATED TUBE		0.35	3.30		0.28	$20 \cdot 0$
1/12 doz.	VASELINE CARBOLATED JAR 2		0.20	1.84		0.15	$25 \cdot 0$
1/12 doz.	VASELINE CARBOLATED TUBE		0.30	2.82		0.24	20.0
1/12 doz. 1/12 doz.	VASELINE EUCALYPTOL TUBE VASELINE MENTHOLATED TUBE		0.30 0.35	2.76 3.30		$\begin{bmatrix} 0.23 \\ 0.28 \end{bmatrix}$	$23 \cdot 33$ $20 \cdot 00$
1/12 doz.	VASELINE POMADE		0.25	2.20		0.19	24.00
1/12 doz.	VASELINE WHITE	2 oz.	0.20			0.15	25.0
1/12 doz.	VASELINE WHITE	4 oz.	0.33	3.12		0.26	$21 \cdot 21$
1/12 doz.	VASELINE WHITE TUBE No. 1		0.30			0.22	$26 \cdot 66$
1/12 doz.	VASELINE WHITE TUBE No. 2.		0.35			0.28	20.00
1/12 doz. 1/12 doz.	VASELINE YELLOW	2 oz 4 oz.	$0.15 \\ 0.23$	1.38 2.16		0.12 0.18	$\begin{array}{c} 20\cdot00 \\ 21\cdot73 \end{array}$
1/12 doz.		4 02.	0.40	3.48		0.29	27.5
1/12 doz.	VITALIS MED	4 oz.	0.70	6.10		0.51	$27 \cdot 14$
1/12 doz.	VITALIS LGE	9 oz.	1.30	12.48		1.04	20.0
1/12 doz.	PERM HUD WHIRLAWAVE		2 05	26.00		2.17	33.23
1/12 doz.	Home Perm Refill Hudnut.		3.25 1.75	14.00		1.17	33.14
1/12 doz.	Home Perm Refill RAYVE		2,1,0				
	NEW		1.49	11.92		1.00	32.88
1/12 doz.	H PERM TONE SPIN KIT NEW.		3.00			2.00 0.50	$33 \cdot 33$ $31 \cdot 5$
1/12 doz.	HAIR TONIC WILDR NO OIL	0 02.	0.73	0.00 [0.00	01 0

LIST OF NATIONALLY ADVERTISED PRODUCTS-Continued

Quantity Unit	Description	Size	Usual Retail	List	Dis.	Amount	Per- centage Profit
			\$ cts.	\$ cts.		\$ cts.	
Unit 1/12 doz.	HAIR TONIC WILDR OILY CREAM OIL WILDROOT. CREAM OIL WILDROOT. CREAM OIL WILDROOT. CREAM OIL WILDR TUBE 1 CREAM OIL WILDR TUBE 1 CREAM OIL WILDR TUBE 1 ITALIAN BALM CAMPANA ITALIAN BALM. JERGENS LOTION. JERGENS LOTION. JERGENS LOTION. JERGENS LOTION. JERGENS LOTION. KKOVAH SALTS. KKOVAH SALTS. KKOVAH SALTS. KKOVAH SALTS. KKOVAH SALTS. OVALTINE PLAIN. OVALTINE PLAIN. OVALTINE PLAIN. OVALTINE PLAIN. OVALTINE CHOC. OVALTINE CHOC. SAL HEFATICA.	12 oz. Sml Lge 4 oz. 8 oz. 16 oz. 8 oz.		\$ cts. 6.00 3.60 6.00 10.00 3.60 6.00 12.00 3.60 5.46 11.16 1.32 3.36 2.90 4.80 7.20 2.75 5.20 5.04 7.32 12.60 7.32 12.60 3.70		\$ cts. 0.50 0.30 0.50 0.84 0.30 0.50 1.00 0.30 0.46 0.93 0.11 0.28 0.49 0.86 0.25 0.40 0.60 0.23 0.43 0.43 0.42 0.61 1.05 0.61	31·5 30·23 31·5 31·7 30·23 31·5 33·33 14·28 13·2 14·67 26·66 24·32 24·61 25·21 28·57 32·20 32·58 30·30 31·74 14·28 16·43 14·63 16·43 12·90 16·43 17·90
1/12 doz. 1/12 doz.	SAL HEPATICA. SAL HEPATICA. SUAVE HELEN CURT REG SUAVE HELEN CURT REG SUAVE HELEN CURT MEN. SUAVE HELEN CURT MEN. SUAVE HELEN CURT MEN. SUAVE HELEN CURT MEN. SLOANS LINIMENT. SLOANS LINIMENT. SKIN BRACER MENNEN.	Med Lge 2 oz. 4 oz. 16 oz. 2 oz. 4 oz. 16 oz. Sml Med Sml Lge	0.85 1.45 0.60 0.95 2.25 0.60 0.95 2.25 0.50 0.90 0.75 1.48	7.35 12.60 4.32 6.84 16.20 4.32 6.84 16.20 4.08 7.34 6.64 13.17		0.62 1.05 0.36 0.57 1.35 0.36 0.57 1.35 0.34 0.62 0.56	27.05 27.58 40.00 40.00 40.0 40.0 40.0 32.0 31.11 25.33 25.67 29.72
1/12 doz.	HONEY & ALMOND CR HINDS HONEY & ALMOND CR HINDS HONEY & ALMOND CR HINDS PRELL. PRELL. PRELL. RAYVE SHAMPOO. RAYVE SHAMPOO. RAYVE CR SHAMPOO. RAYVE CR SHAMP TUBE. SHAMPOO LUSTRE CR SHAMPOO LUSTRE CR TUBE. SHAMPOO LUSTRE CR. SHAWFOO LUSTRE CR. SHAWFOO LUSTRE CR. SHAWFOO LUSTRE CR.	Lge 8 oz. 8 oz. 8 or. 1 1/2 oz. 2 1/2 oz. Med Lge Gnt Jar Med 2 oz. Lge 9 oz.	0.37 0.65 0.79 0.98 0.35 0.69 1.09 0.37 0.65 1.09 1.09 0.37 0.65 0.65	5.46 6.40 8.23 3.15 6.20 9.80 3.36 5.94 10.40 9.78 3.32 5.88 5.88 6.66		0.46 0.53 0.69 0.27 0.52 0.82 0.28 0.50 0.87 0.87 0.28 0.49 0.49	29·23 32·91 29·59 22·85 24·63 24·77 20·18 24·77 20·18 24·77 24·32 24·61 24·61 24·61 24·60 21·66
1/12 doz. 1/12 doz.	SHAV CR BRUSHLESS COLG. SHAV CR COLGATE SHAV CR COLGATE SHAV CR INGRAM TUBE. SHAV CR INGRAM TUBE. SHAV CR GILLETTE BR LESS. SHAV CR GILLETTE SHAV CR LIFEBUOY SHAV CR LIFEBUOY SHAV CR MENNEN PLAIN. SHAV CR MENNEN PLAIN. SHAV CR MENNEN BR LESS. SHAV CR MENNEN BR LESS. SHAV CR MENNEN BR LESS. SHAV CR MENNEN MENTHOL SHAV CR MENNEN MENTHOL SHAV CR MENNEN MENTHOL SHAV CR NOX 3-WAY TUBE. SHAV CR NOX 3-WAY TUBE. SHAV CR NOX 3-WAY TUBE.	Lge Lge Gnt Jar Sml Lge Sml Lge Sml Lge Sml Lge 3 oz. 6 oz. Med	0.43 0.43 0.60 0.60 0.60 0.43 0.43 0.63	4.02 4.02 5.62 5.22 5.22 3.75 6.00 3.90 4.38 6.64 4.19 6.12 4.38 6.64 3.60 5.52 3.08		0.34 0.47 0.44 0.32 0.32 0.32 0.50 0.33 0.37 0.56 0.35 0.37 0.56 0.30 0.37	20.91 20.91 21.66 26.66 25.58 25.58 20.63 19.51 24.48 25.33 26.08 24.49 25.33 25.23 26.08 21.21 21.21

LIST OF NATIONALLY ADVERTISED PRODUCTS-Concluded

Quantity Unit	Description	Size	Usual Retail	List	, Dis.	Amount	Per- centage Profit
			\$ cts.	\$ cts.		\$ cts.	
1/12 doz.	SHAV CR WILLIAM	Lge	0.45	4.08		0.34	24 · 44
1/12 doz.	SHAV CR WILLIAM	Dble	0.65	6.06		0.51	21.53
1/12 doz.	SHAV CR GLIDER WMS	Lge	0.45	4.08		0.34	24 · 44
1/12 doz.	SHAV CR GLIDER WMS	8 oz.	1.00	9.24		0.77	23.00
$1/12 \mathrm{doz}$.	SHAV CR GLIDER WMS	Dble	0.65	6.06		0.51	21.53
$1/12 \mathrm{doz}$.	SHAV CR BR LESS WMS	Dble	0.65	6.06	:	0.51	21.53
1/12 doz.	TOOTH PASTE SQIUBB	Reg	0.55	4.40		0.37	32.72
1/12 doz.	TOOTH PASTE MACLEAN	Lge	0.69	5.60		0.47	31.88
1/12 doz.	TOOTH PASTE MACLEAN	Med	0.43	3.60		0.30	30.23
1/12 doz.	TOOTH PASTE PEPSODENT	Med	0.33	3.14		0.27	18.18
1/12 doz.	TOOTH PASTE PEPSODENT	Lge	0.60	5.70		0.48	20.00
1/12 doz.	TOOTH PASTE PEPSODENT		0.95	9.05		0.76	20.00
1/12 doz. 1/12 doz.	TOOTH PASTE KOLYNOS	Sml Lge	0.33 0.60	3.08		0.26	21.21
1/12 doz. $1/12 doz.$	Tooth Paste Kolynos Gnt	5 oz.	0.00	5.58 8.82		$0.47 \\ 0.74$	$\begin{array}{c} 21 \cdot 66 \\ 22 \cdot 10 \end{array}$
1/12 doz.	TOOTH PASTE KOLYNOS GNT	Dble	0.95	4.95		0.74	$22 \cdot 10$ $23 \cdot 63$
1/12 doz.	TOOTH PASTE LISTERINE		0.33	2.95		0.42	24.24
1/12 doz. $1/12 doz$.	TOOTH PASTE IPANA		0.33	2.88		0.23	27.27
1/12 doz. $1/12 doz$.	TOOTH PASTE IPANA		0.60	5.22		0.24	26.66
1/12 doz.	Tooth Paste Ammident		0.35	2.92		0.25	28.57
1/12 doz.	TOOTH PASTE IPANA		0.95	8.28		0.69	27.36
1/12 doz.	Tooth Paste Ammident	Lge	0.65	5.42		0.46	29.23
1/12 doz.	TOOTH PASTE AMMIDENT	Econ	0.97	8.10		0.68	29.89
1/12 doz.	TOOTH PASTE COLGATE		0.25	2.34		0.20	20.00
1/12 doz.	TOOTH PASTE COLGATE		0.60	5.62		0.47	21.64
1/12 doz.	TOOTH PASTE COLGATE		0.95	8,88		0.74	22.10
1/12 doz.	TOOTH PASTE IODENT 1		0.69	5.60		0.47	31.88
$1/12 \mathrm{doz}$.	TOOTH PASTE IODENT 2		0.69	5.60		0.47	31.88
$1/12 \mathrm{doz}$.	TOOTH POWDER LYONS	Reg	0.30	2.76		0.23	23.33
$1/12 \mathrm{doz}$.	TOOTH POWDER LYONS	Lge	0.50	4.68		0.39	$22 \cdot 00$
1/12 doz.	TOOTH POWD LYONS AMMON.		0.55	4.74		0.40	$27 \cdot 27$
1/12 doz.	ZONITE ANTISEPTIC	Sml	0.35	.2.92		0.25	$28 \cdot 57$
$1/12 \operatorname{doz}$.	ZONITE ANTISEPTIC	Med	0.63	5.25		0.44	$30 \cdot 15$
1/12 doz.	ZONITE ANTISÉPTIC		0.98	8.30		0.70	28.57
1/12 doz.	ZONITE OINTMENT		0.50	4.00		0.34	32.00
1/12 doz.	Zonitors	12	1.09	8.50		0.71	34.86
1/12 doz.	WATERBURY CO PLAIN	16 oz.	1.25	10.20		0.85	32.00
$1/12 \mathrm{doz}$.	WATERBURY Co C & G	16 oz.	1.25	10.20		0.85	32.00
		1		1	1	1	



COMMENTARY

on the

INTERIM REPORT

of the

COMMITTEE TO STUDY COMBINES LEGISLATION

Prepared by
Horace J. Fuller
Professor of Pharmaceutical
Administration
Ontario College of Pharmacy
on behalf of the
Canadian Pharmaceutical Association.

November 1, 1951

Comments

on

The Interim Report

of

The Committee to Study Combines Legislation

and

Comments

on

Proposed Legislation Resulting from the Interim Report

prepared for
The Canadian Pharmaceutical Association

by
Horace J. Fuller
Assistant Professor of Pharmacy
in charge of Pharmaceutical
Administration
Ontario College of Pharmacy

November 1, 1951

FOREWORD

The purpose of this brief is twofold:

- 1. To show that legislation to make resale price maintenance illegal will not appreciably reduce the cost of living which is the avowed aim of the government suggesting such legislation.
- 2. To defend current pricing policies and practices of the retail drug industry of Canada as being economically sound, and free from any charge that it exploits the consumer or adds to his cost of living.

It is not the purpose of this brief to either condemn or condone either price-fixing or resale price maintenance per se.



Documents and the Extent of Their Use in the Committee's Report

Board of Trade—"A Statement on Resale Price Maintenance" (Great Britain)

June 1951

4 lines from page 3 quoted on page 6 of the Committee's Report

8	,,	"	"	5	77	"	77	21	"	"	"	. 22	
											22		
5	22	22	22	11	22	22	"	28	22	22	22	23	

Report of the Committee on Resale Price Maintenance, London, June 1949.

7 lines from page 1 quoted on page 13 of the Committee's Report

Edwards, Corwin D.—"Maintaining Competition", 1949

3 lines from page 73 quoted on page 22 of the Committee's Report

Behoteguy, W. C.—"Resale Prices and the Tire Industry's Big Headache"
—speech before the Akron Chapter of the American Marketing Association, 1948.

5 lines from page 6 quoted on page 24 of the Committee's Report.

Oxenfeldt, A. R.—"Industrial Pricing and Market Practices", 1951.

25 lines from page 427 quoted on page 23 of the Committee's Report.

The above five documents are the total printed documentation used in the report. One of these references states the terms of reference of the British Committee. All the others are used against resale price maintenance. Not a single reference from the literature favouring resale price maintenance is quoted. It is our contention that the quotations are not at all representative of the existing literature on the subject.

There is no evidence in the report that a scientific study of the effects of resale price maintenance was made either on individual sectors of the economy or the national economy as a whole. There are no statistical data in the report, yet such data do exist. No comparison of the movement of prices of non-price maintained goods and price maintained goods, nor their relation to the price index, appears in the report.

The General Conclusions and Recommendations of the Committee fail to disclose even a cursory perusal of the vast literature on the subject published both in Europe and the United States.

CRITICISM OF THE COMMITTEE'S METHODOLOGY

The methodology of the Committee is stated in the Report as follows: "Early in July, through the press and by letter, widespread notice throughout Canada was given that the Committee was anxious to receive from individuals, firms and organizations whatever views they might wish to express upon the matters within the terms of reference.

National organizations were asked to inform their affiliate groups and individual members of the desire of the Committee to secure as wide an expression of opinion as possible. In this, as throughout our work, the press gave most helpful co-operation. Many submissions were received by the Committee in the succeeding months. In addition to the written submissions, opportunity was given for all interested persons to meet with the Committee to discuss and amplify any matters arising out of their representations. Many such meetings were held and, together with the written submissions, were of great assistance."

It is our opinion that this methodology is unscientific, and non-factual.

The evidence against resale price maintenance is solely that of opinions of interested parties.

The methodology also includes the habit of lifting lines out of context, for example:

Under the heading THE COMMITTEE'S VIEWS, item 4, pages 23 and 24, of the Report:

"Comparisons between competitive prices and maintained prices are difficult to make and must be interpreted with prudence. One of the most serious attempts to effect such comparisons was made in the United States by the Federal Trade Commission. Although the study was made with special reference to the drug trade, similar results were observed in other sectors. It led to several conclusions which are reproduced by A. R. Oxenfeldt in his book "Industrial Pricing and Market Practices".

- 1. "... when resale price maintenance becomes effective, it forced chain stores to increase their prices, while individual drug stores, on the average showed price reductions which, however, varied considerably with the size of stores, and, for all independent store groups, the percentage decreases shown were less than the percentage increases made by chain stores".
- 2. "... resale price maintenance affected the prices of different brands in quite different ways in different types of stores and even the same type of store operating in cities of vary-sizes." The price increases were greatest in large cities and in large stores.
- 3. The range of prices charged for the same brand in various kinds of stores became smaller. After the passage of resale price maintenance laws, generally speaking, the stores that reduced their prices "... were not the stores that had been charging the highest prices: the reduction in the (price) spread was accomplished through compulsory increases from the lowest previous price".
- 4. "... in the drug trade, chain and department store groups that were forced to increase prices, generally were realizing substantial gross margins usually averaging 20 per cent or more on sales and sometimes 30 per cent or more before resale maintenance became effective".
- 5. "The price increases forced upon the chain and department stores were accompanied usually by reduction in volume of the price maintained brands sold by these stores."

The Committee omitted the 6th and final conclusion of the Federal Trade Commission as reported by A. R. Oxenfeldt in Industrial Pricing and Market Practices, pp. 427, 428. It reads:

6. "The manufacturers of the price-maintained brands of drug store items covered in this study generally named minimum prices that were within

the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-market products under minimum resale price contracts."

The omission of this final conclusion of the Federal Trade Commission as reported by Oxenfeldt is unfortunate since the Committee, after injecting 5 lines of a statement made by a manufacturer, immediately concluded that "In the light of this evidence and of current information presented to the Committee, it seems clear that, while most schemes of maintained prices may provide only fair margins to the high-cost distributor, the general level of prices is higher with resale price maintenance that (sic) it would be if competition existed".

Had the Committee included item six of the Federal Trade Commission Report as reported by Oxenfeldt and the three following paragraphs in Oxenfeldt, we do not see how the Committee could have arrived at the conclusion stated above.

The omitted paragraphs in Oxenfeldt are as follows:

If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated, manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:

... reductions made by some druggists in prices of some pricemaintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.

A broad survey of 718 products sold in California drug stores yielded similar results. It showed that "the burden of the price decline on these items was not absorbed by the retailers but by manufacturers and/or wholesalers, presumably the former". 89 (Footnote 89—Grether, op. cit., p. 312)1

This is a far cry from the conclusions drawn by the Committee. In fact it weakens and makes them untenable.

At this point the methodology only is being criticized. Later, item 4 of the COMMITTEE'S VIEWS will be analyzed.

The committee is also remiss in its duty in still another way. The terms of reference were: "to study in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the legislation and procedures of other countries, in so far as the latter appear likely to afford assistance..."

A total of 35 lines as quotations from two English sources and 33 lines from three United States sources does not indicate an exhaustive study of the literature in these two countries. The quotation on page 22 of the Report, consisting of three lines from page 73 of a book Maintaining Competition by

¹⁰xenfeldt, Alfred R.-Industrial Pricing and Market Practices, p. 428.

Corwin D. Edwards, is quoted in support of the Committee's views which are against resale price maintenance, but the Committee did not know or cared to ignore the fact that Corwin D. Edwards also said:

Except for the harassment and abuse which may develop under minimum price laws, there is little reason to believe, that in their present form, they will do much either to harm the consumer or to help the groups which have advocated them.

The Committee states that besides the views expressed in submissions "We have also cited views from other sources equally relevant". Views cited from other sources may be used provided that all existing views as published in the literature here, abroad, and in the United States are represented. To repeat, the Report contains only a few sources of information, the sampling appears inadequate since only sources supporting the conclusions of the Committee are expressed.

As "legislation and procedure of other countries"...likely to afford assistance" and "as relevant material", I offer the Proprietary Articles Trade Association of Great Britain. This association was formed in England in 1896. The legal status of resale price maintenance in the Report of Committee Appointed by the Lord Chancellor and the President of the Board of Trade to Consider Trade Practice. Restraint of Trade, 1931, p. 7:

A man has the right to trade as he pleases. A manufacturer or merchant may refuse to sell his goods to anyone who wishes to buy them, or he may sell them on such conditions as he thinks fit to impose. If the buyer of goods who has acquired those goods subject to the terms or conditions subsequently deals with them in a manner contrary to the terms of his agreement he commits a breach of his contract with the seller, and the seller has a right of action against him...

The same report also states on page 28:

The evidence before us did not show that up to the present any of the bodies to which we refer have developed their organization in such a way as to create a dangerous condition approaching monopoly.

The Board of Trade Committee on Restraint of Trade reported in favour of the continuance of the system of resale price maintenance.

The relevancy is that the Board of Trade since this report in 1931 has changed its political complexion under the Labor Government and as June 1, 1951 states:

The Government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

This is identical with the proposals and recommendations of the Interim Committee under discussion.

Also relevant to the subject is the decision of the Supreme Court of the United States on December 7, 1936, unanimously upholding the Fair Trade Law of Illinois permitting resale price maintenance. Part of the text of the decision is as follows:

The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself.

¹Edwards, Corwin D.-American Economic Review, Supplement, March 1940, p. 112.

Appelants here acquired the commodity in question with full knowledge of the then existing restrictions in respect of price which the producer and wholesale dealer had imposed, and, of course, with presumptive if not actual knowledge of the law which authorized the restriction. Appelants were not obliged to buy; and their voluntary acquisition of the property with such knowledge carried with it, upon every principle of fair dealing, assent to the protective restriction, with consequent liability under (paragraph) 2 of the law by which such acquisition was conditioned.

We find nothing in this situation to justify the contention that there is an unlawful delegation of power to private persons to control the disposition of the property of others...

We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity, for which the brand or trade-mark stands. Appelants own the commodity; they do not own the mark or good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation...

There is nothing in the laws of Great Britain or the laws of the United States or the laws of Canada prohibiting resale price maintenance.

CRITICISM OF THE MATERIAL CONTAINED IN THE INTRODUCTION OF THE COMMITTEE'S REPORT

Definition of resale price maintenance

Among restrictive trade practices, resale price maintenance is probably the best known and has been widely analyzed and discussed. By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer".—page 6.

The word "restrictive" stigmatizes the trade practice even before it is defined. Resale price maintenance is prejudged at the outset by the use of this word.

Customary definitions of resale price maintenance:

Resale price maintenance "designates a system whereby the manufacturer endeavors to keep at a level prescribed by him the price of his product charged by retailers and other distributors".1

...resale price maintenance—by which the manufacturer or owner of a trade-marked product may dictate the price below which it may not be resold by distributors.²

that price policy under which the manufacturer of a branded product establishes the price (or the minimum price) at which such product shall be resold to the consumer.³

No such word as "restrictive" is used by these authors. Further, the Committee left out the word "trade-marked" or "branded".

^{*}Seligman, Edwin R. A. and Love, Robert A.—Price Cutting and Price Maintenance, p. 1, 1932.

2Stewart, Paul W. and Dewhurst, Frederic—Does Distribution Cost Too Much? 1939, p. 271.

A Study made by the Twentieth Century Fund, Committee on Distribution.

³Phillips, Charles F. and Duncan, Delbert J.-Marketing, Principles and Methods, 1948, p. 677.

The extent of the practice

The Committee quotes a British White Paper as estimating that in 1938 about 30 per cent of the public's expenditure on consumer goods was on price-maintained articles. "Estimates for Canada which we have received from private sources of "about 500 items", "2,000 to 3,000 articles" and "12 to 15 per cent of department store sales" are obviously not based on accurate or comparable definitions...if not quite as comprehensive as in the United Kingdom, it is yet of significant and growing proportions"—Committee's Report, pp. 6-7.

It is estimated that in the United States in 1947 department stores accounted for about 10 per cent of total retail sales. That is one and a half per cent of total retail sales under resale price maintenance sold through department stores if we take the Committee's highest figure of 15 per cent.

Although resale price fixing may make progress in other fields, to date, resale-price fixing by the manufacturer has made its greatest advance in such fields as drugs, toilet goods and cosmetics, books, sporting goods, and liquor, where price cutting has been prevalent and where well-advertised brand names are common. Although resale-price fixing may make progress in other fields, it has been estimated that not over 15 per cent of the dollar value of goods sold at retail will ever be subject to manufacturer resale-price control.²

Although it is impossible to know the exact proportion of the retail volume of sales under effective resale price control in Great Britain, a strong indication is the percentage of the total volume of business obtained from controlled goods by Harrod's, London's largest department store. In 1933 executives of this firm estimated that 10 per cent, or perhaps slightly more, of the London's store volume was from brands for which prices were fixed by manufacturers. The writer's opinion, after checking over estimates for all the departments of the store, was that not more than 12 to 15 per cent of the sales were controlled brands... Most probably the total proportion of the volume of consumers' goods under control in Great Britain is somewhat larger than that of Harrod's, but it is a comparatively low percentage figure, very likely under 20 per cent.³

Speaking of the United States,

Although the exact percentage of the total volume of retail sales now controlled cannot be known, it is small, possibly no more than 5 per cent and certainly under 10 per cent.⁴

As far as the ultimate coverage is concerned it has been estimated by a number of authorities that no more than 5 to 10 per cent of the country's retail sales will be brought within the jurisdiction of resale price maintenance laws.⁵

Total retail trade in Canada for the first half of 1951 amounted to \$4,761,370,000.6 Taking the highest figure of the authorities quoted above, namely 10 per cent, as the amount of Canada's retail sales under price maintenance, we arrive at the figure \$476,137,000. Let us assume, merely for

¹Weiss—"How to Sell To and Through the New Department Store", Printer's Ink, November 28, 1947, p. 31.

²Phillips, Charles F. and Duncan, Delbert J.—Marketing, Principles and Methods, 1948.

³Greher, E. T.—Price Control Under Fair Trade Legislation, p. 335.

⁴Ibid-p. 322.

⁵Stewart, Paul W. and Dewhurst, Frederic-op. cit., p. 276.

⁶Dominion Bureau of Statistics, Retail Trade, August 1951.

the sake of argument⁵, that the retail prices of goods sold under price maintenance are 10 per cent higher than they would be without price maintenance, then the total reduction possible by the elimination of price maintenance would be \$47,613,700 in six months. Considering the population of Canada to be approximately 14 million, this means a possible reduction in the cost of living of \$3.33 for each man, woman and child, \$6.66 per year, or 55½ cents per month. For a family of four, it would be \$26.64 a year, \$2.22 a month, or 51 cents a week—hardly more than the price of a package of cigarettes.

On October 15, 1951, Prime Minister St. Laurent reasserted that the government was not prepared to submit to parliament any measures to curb the cost of living other than the resale price maintenance legislation promised in the throne speech.

In other words, the government is prepared to reduce the cost of living by 13 cents per week per person or 51 cents per week per family of four. This only, if the 10 per cent assumed for the sake of the argument should prove correct in the face of Oxenfeldt's statement that the empirical evidence that shows average retail prices to have been increased by resale price maintenance is slender.¹

THE COMMITTEE'S VIEWS

Criticism of View Number 1.

The direct and immediate effect of resale price maintenance is the elimination of price competition among retailers in price-maintained goods; this is one of the main objectives of the practice. The cost of distribution is a very substantial part of the price which the consumer pays. Changes which remove that part of the consumer price from the influence of competition seriously restricts the working of a competitive system.—p. 21, 22.

This statement shows a lack of even a superficial knowledge of the economics of distribution. It assumes that as long as competition exists, prices will be lower. Such a rule cannot be applied universally to the marketing of all goods. A few illustrations should point this up.

While much space has been devoted in this chapter to the policy of the Dominion government in promoting competition, it must not be supposed that this is the sole element in Canadian policy in relation to combines. An examination of the policies of the provinces would reveal an astonishing variety of governmental restriction of competition, and permission to associate voluntarily to restrict competition is granted by the Dominion government to trade unions and co-operative associations of farmers, fishermen, etc. The problem here is too much competition and the policy is one of restriction.²

Milk Control Board of Ontario. This Board determines for ninety-two urban markets in Ontario the price at which the distributors must buy milk from the farmer and the price at which they must resell to the consumer. This price may be the result of an agreement between the milk producers' association and the distributors approved on behalf of the consumer by the Board, or, in the absence of an agreement between the parties or where the parties agree on a price considered unfair to the consumers, may be the result of arbitration by the Board. It is an offence to sell milk for less than the established price; the farmer may

Oxenfeldt, A. R.—Industrial Pricing and Market Practices. This writer says that the empirical evidence that shows average retail prices to have been increased by resale price maintenance is slender. p. 429—italics mine.

²Bladen, V. W.—An Introduction to Political Economy, Toronto, 1948, p. 238.

not compete for a bigger outlet by offering milk cheaper, nor may the distributor compete for a bigger share of the market by offering milk cheaper at retail. . . In many markets, however, the number of distributors is unduly large and the wastes of a competitive struggle which must take the form of offering more service, or differentiated milk. instead of standard milk at a lower price, are considerable.1

In the United States, one authority claims that lower costs and prices can be secured in the milk industry by less government setting of prices. Frequently such prices are established at levels which protect inefficient operators; thus they prevent competition from serving its function of eliminating the high-cost distributors.2

In contrast with this point of view, some writers believe the logical approach is through less competition and more government regulation.3

The British Labour Government which believed in the nationalization of some industries thus eliminating competition altogether produced the British White Paper, quoted by the Committee to support its own view. The British White Paper: (p. 21, the Committee's Report).

It is often said that the practice does not prevent traders from competing in the services they give. But this begs the question. It is true that, in order to attract more customers, a trader may increase the amount and quality of his service. But the potential customers may be comparatively indifferent to extra service, whereas they would be glad of the original amount of service at a lower price. It is this alternative which resale price maintenance stops the trader providing.

A United States writer levels the same charge against competition as the British White Paper levels at resale price maintenance:

During the war many manufacturers, wholesalers, and retailers reduced their marketing costs quite substantially . . . governmental regulations of credit under Regulation W, curtailed deliveries, reduced advertising expenditures, and fewer selling events resulted in lower operating costs in most retail stores. At this time, considerable attention was given to the question: "Can distribution costs be reduced postwar?" Moreover many retailers and wholesalers, as well as manufacturers, expressed the desire to avoid returning to the numerous and varied services which they had performed in the years before the war and which were partially to blame for high marketing costs. Despite this expressed desire, the increase in competition which followed the end of the war and the relaxation of governmental controls brought a resumption of many practices that resulted in higher costs.4

No more comprehensive study of the costs of distribution has ever been made in North America than that made by the Committee on Distribution of the Twentieth Century Fund. Its findings were first published in August, 1939. This committee found that:

Competition in production generally has had the effect of decreasing costs as the pressure for lower prices spurs mechanization and improved operating methods. But in distribution competition frequently tends to increase costs.5

Taking the field of distribution as a whole the process undoubtedly costs too much. But how much too much is impossible to say. In other

¹Bladden, V. W.—op. cit., p. 240. ²Bartlett, R. W.—The Milk Industry, 1946, pp. 82-84. ³Journal of Marketing, Vol. XII, No. 2 (October 1927) "Connecticut Studies Milk Delivery", pp. 211-219.

⁴Phillips, Charles F. and Duncan, Delbert J .- op. cit., p. 15.

⁵Stewart, Paul W. and Dewhurst, Frederic—Does Distribution Cost Too Much?, p. 339.

words we can say with confidence that there is waste in distribution, but we cannot reduce it to a percentage figure—as a whole, or in any of its parts. Nor can we say that distribution is more or less wasteful than production.¹

Reconsidering the milk industry—milk is a standardized product. The government of Ontario not only sanctions price-fixing, it makes it mandatory. Different brands of milk must all sell for the same price. It is illegal to sell milk for less. The consumer has a choice among producers' brands but no choice, no alternative concerning price.

Considering the drug industry—Aspirin for example. It is a standardized product. Regardless of brand name it must conform to the standards set by the British Pharmacopoeia and it is not possible, chemically speaking, to set them higher. In the United States the standard is the United States Pharmacopoeia. The consumer can purchase Bayer Aspirin under the Fair Trade Laws for 15 cents a package of 12 tablets or he can purchase a package of 12 tablets of St. Joseph's Aspirin for 10 cents, or he can purchase 100 tablets of Bayer Aspirin for 59 cents under resale price maintenance and aspirin in 100's, same standard, down as low as nine cents a hundred. He is not forced to buy Bayer. If he does it is his choice. He can purchase cheaper brands in almost any drug store whether chain or independent. This is very different from the method by which milk and a number of other goods are marketed. There is no horizontal fixing of prices. The customer always has an adequate alternative if he does not desire the price-maintained article.

One other observation should be made concerning the market for drugs. Like salt, one does not take more medicine merely because it is cheap. The demand for drugs in inelastic. People take medicines because they are ill or to prevent illness. They do not take them because the price has been reduced.

Criticism of View Number 2.

Resale price maintenance facilitates and makes more effective horizontal agreements (open or tacit) among manufacturers. The practice may easily help to produce an effect similar to that which would result from direct collusion . . . Moreover, resale price maintenance is very often a necessary complement to agreements among manufacturers, because it would be quite useless for manufacturers to agree on a certain price for their respective products, if price competition at the retail level disturbs the whole agreement.

There is no room for the use of the word may in a scientific discussion. It must be proven to be a fact to be valid. In support of their may, the Committee quotes Corwin D. Edwards,

Pressure from distributors promotes uniformity in the discounts; the self-interest of manufacturers may easily lead to uniformity in factory prices.

Corwin does not say that it does. He says it may. Another authority, E. T. Grether, says,

It is dubious to assume that in most instances formal or informal collaboration among competitive manufacturers need wait for resale price maintenance.²

There are a number of industries in which one or a few concerns completely monopolize production. (Those engaged in producing shoe machinery, Pullman cars, cash registers, typewriters, electric accounting machinery, fire-extinguishing apparatus, linoleum, rayon yarn,

¹Ibid-p. 348.

²Grether, E. T.—Price Control Under Fair Trade Legislation, p. 309.

aluminum, tungsten-carbide, photographic supplies, molybdenum, magnesium, beryllium, anthracite, iron ore, building plaster, linseed oil, nickel, sulphur, industrial alcohol, synthetic nitrogen, fertilizer, plumbing supplies, farm implements, air brakes, glass containers, heat-resistant glassware, optical glass, washing machines, sewing machines, sewing thread, electric lamps, ball bearings, heavy electrical equipment, electric motors and meters, locomotives, naval vessels, bananas, canned soups, biscuits and crackers, and trans-oceanic aviation and communication services. (This is only a partial list). And even a larger number of industries are characterized by some degree of monopoly control. In 1935 there were 54 industries in which the four largest firms produced more than two-thirds of the total product and in 1937 there were 121 products in the manufacture of which the four largest firms produced more than three-fourths. Inevitably there will be a large measure of monopoly control, perhaps almost complete control, in such industries."

The above quotation applies to the United States but many United States producers have subsidiaries in Canada. Obviously, none of these giants have to wait for resale price maintenance in order to make tacit horizontal agreements. To blame horizontal agreements on resale price maintenance appears illogical.

In the drug field there are so many brands of many items that horizontal agreements among manufacturers would be unthinkable e.g.,

in the 1937 Hearings on the Miller-Tydings bill, E. L. Newcomb, Executive Vice-President of the National Wholesale Druggists' Association, testified that there were 200 brands of toothpaste on their list and that a complete enumeration would probably exceed 1,000; also that partial listings a few years ago for face powders and laxatives carried 1,200 and 2,000 brands respectively. At the same hearings, C. F. Welch, of the Toilet Goods Association, Inc., stated that the Association's compilation of trade-marks for cosmetics and toilet soaps numbered 28,000. 75th Congress, 1st Session on H.R. 1611, Serial 1, January 27, 29, 1937, pp. 26, 58.2

Criticism of View Number 3.

However, when measures of enforcement are involved, resale price maintenance establishes a private system of law allowing no appeal to the courts of justice, as it is clearly shown in the British White Paper.

This statement is incorrect. The facts do not bear out the statement. There have been hundreds of cases in the United States courts in the past half century involving resale price maintenance, one way or the other. These cases involve prosecution by the government for alleged resale price maintenance policies and cases brought by manufacturers against distributors, and cases brought by distributors against manufacturers. Over 300 cases are listed on pages 527-533 of "Price Cutting and Price Maintenance" by Edwin R. A. Eeligman and Robert A. Love, Harper & Bros., New York, 1932.

An interesting case is described by these authors as follows:

Prior to 1915 the subject of resale-price maintenance had, with a single exception, been brought before the courts voluntarily by the firms which were undertaking to maintain prices. In the Keystone and Kellogg cases the government took the initiative and the price-maintaining firms were placed on the defensive. They were also defendants in the next federal case when, for the first time, a customer brought suit against

¹ Ise, John-Economics, 1946, p. 140.

² Grether, E. T.-op. cit., p. 226.

a seller who was attempting to compel adherence to fixed resale prices. The basis for the suit was found in the Clayton Act which had been passed less than a year before, (October 15, 1914).

The Great Atlantic and Pacific Tea Company, owning and operating a system of chain stores, instituted a suit for an injunction and damages against the Cream of Wheat Company on the grounds that by refusing to sell to it the Company had violated that part of the Clayton Act forbiding price discriminations which would either lessen competition or tend to create a monopoly. Action was brought by the company for the purpose of compelling the Cream of Wheat Company to sell to it.

In denying relief to the plaintiff the court pointed out that while the system tended to lessen competition it did not constitute a restraint of trade so unreasonable as to entitle the plaintiff to relief under the Clayton Act; on the contrary, the court was of the opinion that the effect of an injunction would be to restrain trade to the extent of aiding the price cutter to eliminate competition by making it impossible for other retailers to handle the article at a profit. In other words, the court viewed price cutting rather than price maintenance as the weapon of the monopolist.

This is a court decision, not an expression of opinion.

It was just such a suit that brought about the recent United States Supreme Court decision invalidating the non-signer clause of the Fair Trade laws. It was a retail whisky dealer who fought the case through the courts.

The legal position of resale price maintenance in Great Britain is quite different from that of either Canada or the United States. I quote the legal position in Great Britain at some length:

A Trade Association is then a Trade Union, as defined in the Trade Union Act, 1876, Section 16. The term "Trade Union" means "any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not... have been deemed to be an unlawful combination by reason of some one or more of its purposes being in restraint of trade". In so far as a trade association has for its principal objective the imposition of restrictive conditions on the conduct of trade it is a Trade Union within the meaning of this Act.

"Certain important results follow. Trade Associations enjoy the protection of the whole series of Trade Union Acts from 1871 to 1927 and Section 2 and 3 of the 1871 Act read: "The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such a trade union liable to prosecution...:" and "the purposes of any trade union shall not by reason merely that they are in restraint of trade be unlawful so as to render void or voidable any agreement or trust," An important legal disability is, however, imposed on Trade Association by Section 4 of the Act of 1871 which renders "an agreement between members of a trade union concerning the conditions on which any members shall or shall not sell their goods..." not directly enforceable in Courts of Law.

The Trade Associations can thus obtain immunity against actions for damages which might (if they were not deemed trade unions) have been brought against them for committing what would otherwise have been actionable wrongs in the exercise of price maintenance. Effective price maintenance, however, requires that sanctions should be applied against those who sell below the permitted price. Yet there is no contractural obligation enforceable in the ordinary courts on the seller to conform to the agreed price. Trade Associations have, therefore, devised their own sanctions; the so-called "Stop List", a very powerful sanction indeed, whereby supplies are withheld from sellers adjudged by the association to have infringed the regulations for price-maintenance. Trade Union status permits the withholding of supplies to such traders except where, in the view of the ordinary courts of law the association has been guilty of "restraint of trade."

"The current law with respect to restraint of trade was settled in 1894

by a House of Lords' decision which reads as follows:

The public has an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade themselves, if there is nothing more, are contrary to public policy, and, therefore, void. That is the general rule. But there are exceptions: restraint of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is sufficient justification, and, indeed, it is the only justification if the restriction is reasonablereasonable, that is, in reference to interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time, it is in no way injurious to the public." The courts have not, in fact, excluded the enforcement of price-maintenance by the "Stop List" as restraint of trade...1

To say that "resale price maintenance establishes a private system of law allowing no appeal to the courts of justice" is incorrect. Through the years, as indicated in the foregoing quotations, it may have amounted to that in England but only because of the nature of English law and custom. Resale price maintenance per se does not produce that. English law has. Canadian and United States law has not. Witness the case described in the Globe and Mail of October 31, 1951—"A \$6,000,000 treble damage suit was filed today in Federal Court by the Sunbeam Corporation of Chicago, makers of household appliances, against R. H. Macy & Company and four officers of the department store as a result of the price war last May." At this point, it is of no interest who might win the case. The point is that resale price maintenance practices do not establish a law allowing no appeal to the courts of justice.

It was on the method of enforcement that the Proprietary Articles Trade

Association of Canada made its mistake.

"The sixth report (1927) was concerned with an association of wholesale and retail drug stores and manufacturers of proprietary articles sold by them (Proprietary Articles Trade Association). The association proposed to enforce maintenance of resale prices by retail druggists by a system of boycott. The report held the arrangement to be in contravention of the Act (Combines Investigation Act) and the Association dissolved."2

It is my understanding that no case has ever proceeded through the Canadian Courts involving retail price maintenance because to date there is neither permissive or prohibitive law regarding it. It would be unwise to pass prohibitive legislation in Canada because of trade practices in Great Britain. No parallel structure is involved.

p. 210.

¹ Hall, Magaret, (Fellow and Tutor in Economics at Somerville College, Oxford)-Distributive Trading, Hutchinson's University Library, pp. 148-150.

² Bladen, V. W.—An Introduction to Political Economy, University of Toronto Press, 1948.

Criticism of View Number 4.

Although precise information is lacking, there is some evidence that resale price maintenance contributes to price stability but that the general level of prices, thus stabilized, is higher than it would be under competitive conditions and production more stable.

In support of this view the Committee quotes 5 out of the 6 conclusions made by the Federal Trade Commission of the United States as reported in A. R. Oxenfeldt's book "Industrial Pricing and Market Practices".

The question of the moment is how large is the "some" evidence? how much higher is the present level of prices as a result of present resale price maintenance as disclosed by the "some" evidence. Since the government is basing its proposed legislation to reduce the cost of living on this evidence, it must be both conclusive and substantial.

Oxenfeldt spends less than four and a half pages of his 602 page book on the "Economic Effects of Resale Price Maintenance", pp. 425-429, one page of which is the six conclusions of the United States Federal Trade Commission. There is nothing in these four and a half pages to give the Committee more than the thinnest thread on which to hang their statement quoted above.

Oxenfeldt's concluding paragraph reads:

In estimating the effect of resale price maintenance legislation upon price, two facts stand out. First, independent distributors as a group are still strongly in favor of it and very probably not because it tends to lower their margins. Second, it greatly limits the range of pricecutting and so restricts the price inducements that mass distributors can offer. Both facts reinforce the slender empirical evidence (italics mine) that shows average retail prices to have been increased by resale price maintenance. Third, prices have increased most to those buyers who have previously been economical enough to patronize mass distributors and who are compelled by low incomes to patronize cut-price stores. Consequently, resale price maintenance appears to be regressive in its effects. Fourth, resale price maintenance has restricted price-cutting by the large retailers more than by the small independent stores. Small distributors generally can get away with a fair amount of price-cutting, but large distributors are under careful surveillance by the manufacturers and rival retailers. Thus resale price maintenance tends to favor the small distributor in two ways: he cannot be undercut by the large distributor, and he is left considerable room in which to undercut the large distributor.

I would like to emphasize the statement "the slender empirical evidence that shows average retail prices to have been increased by resale price maintenance" because it on such slender evidence that the government has based its proposal to outlaw resale price maintenance.

While Oxenfeldt1 states that there is slender empirical evidence, he produces none whatsoever. Because the evidence is so important in any court of law, it perhaps is best to quote almost the balance of the four and a half pages Oxenfeldt spends on the "Economic Effects of Resale Price Maintenance."2

"1. Difficulties in empirical estimates of influence of resale price maintenance. To determine the effects of resale price maintenance legislation, it is necessary to compare actual conditions after this legislation with conditions that would have existed if the legislation had not been passed. Of course, it is impossible to turn back the clock for this purpose.

¹ Oxenfeldt is being laboured because his is the only evidence submitted by the Committee in support of their view.

² Oxenfeldt, A. R.—op. cit., pp. 425-426.

"Several methods may be used to obtain suggestive evidence about the influence of resale price maintenance legislation on retail prices. First, comparisons can be made between prices in states where resale price maintenance is legal and in states where it is not. Second, the changes in prices of products under resale price maintenance can be compared with the changes in prices of products not priced under resale price maintenance. Third, the prices of goods under resale price maintenance after the legislation was passed can be compared with the prices of the same products before the legislation was passed.¹

"These comparisons are risky (italics mine) because of the likelihood that dissimilar things will be compared. Brands of goods for which manufacturers set a minimum retail price may be essentially different from other brands of the same goods that manufacturers do not price under the resale price maintenance laws. The difference in the actions of manufacturers creates a presumption that their brands have an essential economic difference. Comparisons of prices before and after legislation are not reliable on two counts. First, the conditions under which legislation is passed generally are those of rapid economic change. For example, most laws legalizing resale price maintenance were passed during years when general business conditions changed more or less suddenly. Many of the state resale price maintenance laws were passed in 1933 and 1944" (26 of the state fair trade laws were not passed until the first half of 1937)"' years when business had sudden ups and downs, largely resulting from the N.R.A. and the A.A.A. programs of the wernment. The Miller-Tydings Act also became law at the beginning of one of the steepest downswings in the nation's history. Second, the response of prices soon after the passage of legislation may not be the same as it would by after manufacturers, retailers, wholesalers, and consumers have become familiar with the workings of the legislation.

"Comparisons of prices in states where resale price maintenance is legal with prices of identical products where it is not are also difficult. Almost invariably, many prices will be charged at any time for a particular legal in states where resale price maintenance is illegal; price variations will be accounted for partly by difference in class of store, size of community, income class of neighborhood, and the like. With which of the many prices in such states are the prices set by manufacturers under resale price maintenance laws to be compared?

"Despite these difficulties in obtaining reliable empirical evidence of the cifects of resale price legislation, the conclusions that may be drawn from the available evidence will be briefly summarized. The effects of resale price maintenance legislation upon retail prices will be described. Also pertinent to an evaluation of resale price maintenance, but mentioned only incidentally, are its effects on retail outlets, and the number and sales volume of wholesalers." "If fifect of resale price maintenance on prices paid by consumers. Several studies wherein prices in fair trade states were compared with prices of identical brands in nearby states where resale price maintenance is illegal may be summarized:

- 1. A comparison of 117 branded items showed that thirty-five cost about one-third less in Washington, D.C., which has no fair trade law, than in Maryland, where resale price maintenance is legal; thirty-eight cost about one-quarter less, and twenty-nine cost one-seventh less.
- 2. Fifty-four fair trade drug items cost an average of 16.2 per cent more on the east bank of the Mississippi, where fair trade is legal, than on the St. Louis side, where it is not.

¹ These are wirtually the only methods used by E. T. Grether in his Price Control Under Fair Trade Legislation.

(These results were reported in "The Not-So-Fair-Trade-Laws," Fortune, January, 1949, p. 70. It is not clear whether in places where resale price maintenance is illegal these studies reported the average price in all kinds of stores, or the lowest or highest price at which the product was sold. The dates of these surveys were not given in the article)

- 3. On isolated items, the following differences in price between the District of Columbia and Maryland were reported (in dollars);
 - (a) Barbasol Shaving Cream: District of Columbia, .29; Maryland, .39
 - (b) Lilly's Lextrol (sic) Pulvules (84's): District of Columbia, 2.29; Maryland, 3.15
 - (c) Old Grand-dad (whisky): District of Columbia, 5.45; Maryland, 6.55, (before state tax)
 - (d) BC Headache Powders: District of Columbia, .10; Maryland, .19"

The material quoted above, plus the quotations on pages 7, 8, and 28 of this brief is the total of the material presented by Oxenfeldt, with one exception, under the heading *Economic Effects* of *Resale Price Maintenance*.

The one exception, which is not pertinent at the moment, is:
"In Great Britain, where resale price maintenance has been practiced for a relatively long time, two governmental committees concluded that retailers were allowed relatively small margins (Grether, op. cit., pp. 314-315). The British experience suggests, as do other considerations, that retailers "... may lose part or all of this initial bargaining advantage as the system matures. (Grether, op. cit., p. 312)"

Despite his own criticism of the methodology of obtaining empirical evidence, Oxenfeldt states "the conclusions that may be drawn from the available evidence will be briefly summarized." They have been given on page 21 of this brief. His criticism of the methodology of obtaining the evidence makes "the slender empirical evidence" even more slender.

Oxenfeldt's book was published in 1951. His available evidence consists of quotes from Grether's "Price Control Under Fair Trade Legislation", the Fortune article of January 1949, and the Report of the Federal Trade Commission on Resale Price Maintenance, 1945. On the following pages, we offer other available evidence, which was equally available to Oxenfeldt, and to the Interim Committee for that matter. We do not maintain that this additional evidence, which we are presenting, is more valid than that used by Oxenfeldt and the Committee. We do claim that it is equally valid.

How Fair Trade Has Checked Price Increases1

Drugs and toiletries sold under Fair Trade contracts have increased in price by only 1.39 per cent from 1939 to June 1, 1947, according to a thorough survey made by the National Association of Chain Drug Stores. When the increase in prices is weighed according to the public's actual purchases in drug stores, the rise in prices from 1939 to 1947 stands at an average of only 3.12 per cent.

The study is based on Fair Trade minimum prices of 7,334 drug and toiletries items, sold in drug stores, which were on Fair Trade in 1939 and still are on Fair Trade. These items are unchanged, in size and quality, since 1939 so the price comparison is accurate. The items are from 250 manufacturers. The 250 manufacturers account for approximately 85 per cent of all Fair-Traded drugs and toiletries sold in chain drug stores.

¹ Chain Store Age, October 1947.

"The cost of purchasing one of each of these items, at Fair Trade retail price, in 1939 would have been \$14,403.29. The cost of purchasing one of each of the same items, at Fair Trade retail prices, on June 1, 1947, would have been \$14,603.56. Thus the net increase in the price of all of these 7,334 Fair Traded items has been only \$200.27 or 1.39 per cent.

COMPARISON BETWEEN 1939 AND 1947

Food	up	103.7%	
Apparel	up	85.1%	All items
House Furnishings	up	81.5%	up
Rent		4.7%	59.3%
Fuel, Ice, Electricity	up	20.7%	
Miscellaneous	up	38.5%	
Fair Trade Prices on Drugs and Toiletries		up	3.1%

The National Association of Chain Drug Stores engaged Joseph A. Fletcher, consultant, to make an impartial study. The results of the study were presented by Fred J. Griffiths, secretary of the National Association, at a meeting of Associated Chain Drug Stores on September 9, 1947, at the New Yorker Hotel, New York.

		No		
	Items	Change	Down	Up
Drugs	4299	2674	340	1285
Vitamins	455	93	269.	93
Cosmetics	1814	1213	61	540
Toiletries	541	356	22	163
Miscellaneous	225	41	5	179
Summary	7334	4377	697	2260

TABLE 2

PRICE INDEXES OF FIFTY LEADING DRUG STORE ITEMS BEFORE AND AFTER DISTRIBUTION UNDER FAIR TRADE CONTRACT FOR CHAINS AND VARIOUS SIZES OF INDEPENDENTS¹

List Price Equals 100

Store Type (Annual Volume)	Before Fair Trade	1939.	Change
1. Independent—less than \$10,000 2. "\$10,000 to \$20,000 3. "\$20,000 to \$30,000 4. "\$30,000 to \$50,000 5. "\$50,000 and over 6. Chain stores—all sizes	93.1 92.7 91.7 90.6 85.8 78.6	90.6 89.3 88.2 87.3 85.4 83.5	$ \begin{array}{r} -2.5 \\ -3.4 \\ -3.5 \\ -3.3 \\ -0.4 \\ +4.9 \end{array} $
Weighted Average	87.0	87.0	-4.9

Drug Store Fair Trade Prices Up Only 7.4% as Others Soar $14.8\%^2$

"prices of fair traded merchandise in the drug store have risen only 7.4 per cent in the past 35 months, or exactly half the 14.8 per cent increase registered by consumer goods in general.

"This was revealed last week by the Bureau of Education on Fair trade when it released the results of a survey conducted for the Bureau by McKesson & Robbins.

¹ Ostlund, H. J. and Vickland, C. R.—Fair Trade and the Retail Drug Store, 1940, p. 11. 2 Drug Topics, New York, January, 1951.

"Products included in the comprehensive study represent more than 90 per cent of the drug store sales, exclusive of fountain, tobacco, and magazine volume.

"Non-fair traded drug store items increased 13.3 per cent from January 1, 1947, to December 1, 1950, or almost at the same rate as the consumer price index.

"Covered in the study were the lines of

- 53 pharmaceutical manufacturers
- 51 proprietary manufacturers
- 51 toiletry manufacturers
- 74 sundries producers

whose total volume represent more than 90 per cent of the \$2,400,000 worth of business done in the drug stores."

These figures are not subject to most of the limitations (before and after legislation, between geographical areas where price maintenance is legal and areas where it is not, difference in class of store, size of community, income of class of neighbourhood, and spotty sampling of a limited number of articles as 54 and 117) as are those of Grether and Oxenfeldt.

Reinhold P. Wolff contends that fixed retail prices in Europe have not raised general price levels, nor created price uniformity to any considerable extent, nor prevented the growth of large-scale retailing.¹

...prices have increased most to those buyers who have previously been economical enough to patronize mass distributors and who are compelled by low incomes to patronize cut-price stores.²

also

All the evidence available and *a priori* theorizing point indubitably to the conclusion that the patrons of lower price, limited service firms are forced to pay higher prices for the goods under control than previously³

but

Thus consumers who patronize the outlying dealers are least injured, or may gain by resale control because they have been paying high prices⁴

and

In general, however, it appears that resale price maintenance in the drug trade to date has been advantageous to the patrons of outlying stores because of the tendency for these dealers to reduce prices somewhat⁵

It is statistically impossible to measure these two tendencies and measure one against the other. Therefore, it is not valid to say that the one has increased the price level without at the same time saying the other has lowered the price level. No conclusion for or against resale price maintenance is possible from this data. Prices only have been considered. Volume of goods bought by both these classes of consumers would have to be considered also to make the data valid. This has not been done.

¹ Wolff, Reinhold P.—Price Control Under "Fair Trade" Legislation Round Table. The American Economic Review, Vol. XXX, No. 1, Supplement, March 1940, pp. 115-117.

² Oxenfeldt, A. R.—op. cit., p. 429.

³ Grether, E. T .- op. cit., p. 298.

⁴ Ibid-p. 306.

⁵ Ibid-p. 306.

⁹⁶²⁵⁶⁻⁸

It is interesting to note what some of the prices were previously.

Two cases illustrate the type of raw material from which the 1933 price tabulations are built. Table I, in summary form, compares the advertised prices of a San Francisco firm in 1933 with published wholesale prices and with the then recommended prices of the Northern California Retail Druggists' Association. Only 8 of the 106 items were offered for sale at prices above the regular wholesale list price, and only 6 at the wholesale list, whereas 92 were offered below the wholesale list. The arithmetic mean of the prices of the 106 items was 11.9 per cent below the mean of wholesale prices, and 36.9 per cent below the mean of the recommended retail prices of the Northern California Retail Druggists' Association. The prices recommended by the Association would have provided an average margin of 30.1 per cent of sales if dealers had purchased at regular wholesale prices.

The second example is from Los Angeles. In November 1933 a Los Angeles retail drug firm famous for price cutting offered in three advertisements in the Los Angeles *Evening Herald* to sell seventeen drug articles below the published wholesale price. The price of these articles varied from 52.9 per cent to 88.6 per cent of the regular wholesale list; the arithmetic average was 74.2 per cent of it. This firm offered these items from 47.1 per cent to 11.4 per cent below the regular wholesale prices; on the average it had cut 25.8 per cent below the wholesale list¹

This lengthy quotation qualifies considerably conclusion number 1 of the Federal Trade Commission Report as reported by Oxenfeldt and appearing on page 23 of the Interim Report.

1. "... when resale price maintenance becomes effective, it forced chain stores to increase their prices, while individual drug stores, on the average, showed price reductions which, however, varied considerably with the size of stores, and, for all independent store groups, the percentage decreases shown were much less than the percentage increases made by chain stores."

In 1931 there were approximately 4,000 chain drug stores in the United States. Forty per cent of these were operated or controlled by four companies, the L. K. Liggett Company, the Walgreen Company, the Whelan Drug Company, and the Peoples Drug Store of Washington. During 1933 or 1934 the Liggett Company, largest chain of them all, the Whelan Drug Company, the Owl Drug Company, largest drug chain on the Pacific Coast, and the Mayflower chain all were in the bankruptcy courts. In 1933 the United Drug Company, an operating and holding company, reorganized the L. K. Liggett Company under the name Liggett Drug Co., Inc. and in the same year purchased the assets of the bankrupt Owl Drug Co. In 1944 it purchased the stock of the Sontag Chain Stores, Ltd. of California, a chain of some 48 drug stores.

In November of 1949, *Time* magazine reported that the Ligget Drug Co. had slipped in net earnings from \$4,048,403 in 1946 to \$1,415,869 in 1948, and in the first nine months of 1949 reported a loss of \$1,167,125. Also, they reduced the number of their stores from 540 in 1946 to 340 in 1949 and planned to level off at about 300 stores in 1950. Further, they trimmed their staff by 2,500 in 1949.

Conclusion number 6 of the Federal Trade Commission Report as reported by Oxenfeldt was omitted by the Committee from the Interim Report. It reads:

¹ Grether, E. T.-op. cit., pp. 86-87.

The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price maintenance.

Perhaps the Committee left this out because on the surface it looks inconsistent with conclusion number one of the Federal Trade Commission. However, it is not inconsistent, when we realize the chain stores mentioned in conclusion one must have been the ones who were cutting prices below the wholesale level and using them as "loss-leaders".

On the other hand, if the manufacturers named minimum prices that were within the range of prices actually charged by their large-volume customers, then resale price-maintenance did not increase the price level as charged by the Committee, nor force patrons of lower price, limited service firms, or buyers who had previously been economical enough to patronize mass distributors, to pay higher prices. The only deprivation it caused was to deprive patrons of "loss-leaders" only of their bargains. How much bargain was there when the major chains, mentioned on the previous page, went into bankruptcy?

The Committee copied the first three lines of Oxenfeldt, page 428, into their report but failed to mention the middle of the page which states, "The Federal Trade Commission concluded:

. . .reductions made by some druggists in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large, or in some cases, even larger margins than were realized previously when the items were sold at higher prices."

The facts mentioned in the Federal Trade Commission Report Conclusion number 6 and the one quoted above and the methodology of the Committee in not caring to include evidence before them seriously damage their claim that resale price maintenance raises the price level.

Grether appraises the situation correctly when he says,

Although the movement for the control of price competition arises out of conflicts within industry and trade and finds its deepest meaning in the play of these forces, the public presentation of the case for and against it are often couched in terms of consumers' welfare¹

and

The unique aspect of the present movement is the bargaining juxta-position of manufacturers with monopoly rights in their brands and organized retailers with monopoly power derived from combination superimposed upon their individual 'partial monopoly' controls. Under former circumstances, the most strongly entrenched manufacturers often were able to obtain dealers' services for little or no reward, or even enjoyed a begrudged subvention; now dealers demand that the brands of these manufacturers pay their way²

The Twentieth Century Fund Committee on Distribution has summed the situation up admirably when it says,

As is always true in such institutional conflicts, the defense unconsciously keeps running back and forth between broad public interests and private desire of individuals to be saved by law.

¹ Grether, E. T .- op. cit., p. 294.

² Ibid—p. 311.

Opponents of price maintenance rest their case on a similar mixture of noble and "me first" oratory. Being big distributors, they are outnumbered by the samll, but they have powerful means of expressing their views. Through the loud-speakers of advertising, radio and artful display, they inform the world that through price maintenance:

- (1) efficiency is being hamstrung;
- (2) savings from low costs must be hoarded instead of passed on to the public;
- (3) operating margins are so unequal in different types of outlets and different communities that only at a handful of points can a fixed minimum price be appropriate;
- (4) that which is judicially approved in the name of the manufacturer's goodwill is really foisted upon him to his own disinterest by distributors who are already too numerous and who are literally going on "commercial relief" at public expense . . . "1

Further evidence that resale price maintenance does not necessarily increase the price level is offered in the following:

Some little evidence on the shifts in price levels that have resulted is being accumulated. One fairly elaborate summary appeared in an article by Reinhold Wolff and Duncan Holthausen in the July 1938 issue of Dunn's Review. This was based on a voluminous collection of New York State prices filed with the New York State Pharmaceutical Association, others secured with the help of the National Independent Pharmacists, Inc., and partly checked by independent sampling by the authors . . .

On speculative grounds only, it seems likely that the increase in cut-rate stores measured the rebound from "deep loss leaders" and price advertising. It seems at least credible, on the other hand, that the relief from this pressure made it more worthwhile for small neighbourhood dealers to push the affected lines instead of merely carrying them as necessary convenience goods. This last possibility must certainly have been supplemented to some degree by the tendency of the minimum price to become standard.

One weakness in these returns is that there is no measure of the relation of sales volume to the different adjustments. Assuming that the total public bill for these popular goods was higher as a result of the laws, it is still an open question whether the increased cost was more or less important than its value as leverage toward better balanced competition on an efficiency basis.²

A footnote to the above reads, "The results of these several inquiries naturally varied according to areas, types of stores studied, and the interests of the surveyors, but in the main they confirm at least the existence of conflicting trends similar to those pictured by Wolff and Holthausen.3"

The fourth conclusion of the Federal Trade Commission Report should be analysed since it is used by the Committee in support of its views.

4. ". . . in the drug trade, chain and department store groups that were forced to increase prices generally were realizing substantial retail

¹ Stewart, Paul W., and Dewhurst, Frederic-Does Distribution Cost Too Much? pp. 271-272.

² Ibid—pp. 274-275.

⁸ Ibid-p. 275.

Basis net sales 100%

gross margins, usually averaging 20 per cent or more on sales and sometimes 30 per cent or more before resale price maintenance became effective."

If department stores and chain stores were averaging only 20 per cent on sales on drug trade items, then they were using them as loss-leaders. "The operating expenses of R. H. Macy, a New York department store, increased from 13.65 per cent in 1888 to over 30 per cent by 1930."

OPERATING EXPENSES OF CHAIN STORES AND ALL STORES IN SELECTED FIELDS² 1935 Net Sales equals 100 per cent

Field		Chain	All stores*
Average		24.9	22.9
Grocery		16.7	12.8
Grocery and meat		17.4	14.9
General merchandise		22.9	20.7
Department Store		23.1	29.2
Variety		26.9	26.6
Men's clothing and furnishings	`	29.7	26.8
Shoe		29.7	27.9
Automobile accessory		30.0	28.9
Filling station		30.0	18.1
Drug (with fountain)		26.7	23.9

Source: Census of Business: 1935, Retail Chains (1937), pp. 33-37, and Retail Operating Expenses (1937) p. 8.

* No allowances included for proprietor's salary in unincorporated enterprises.

OPERATING EXPENSES OF THE DIFFERENT TYPES OF RETAIL OUTLETS AND³ COMPARISON OF OPERATING EXPENSES BETWEEN SPECIALTY CHAINS AND CORRESPONDING GROUPS OF DEPARTMENTS IN DEPARTMENT STORES WITH

Sales of More than One Million. Year 1933

		Lusis	net sutes	100%
House-to-House Sellin	ng		45.3	
Independent Departme	ent Stores		35.4	
All Independent Store	s		33.6	
Mail-Order Houses			28.1	
Chain Stores		• • • • • • • • • • • • • • • • • • • •	27.1	
rtment Store Chains	27.4	Independent Departs	ment	
& Boys' Clothing &		Store		36.9
nishing Chains	35.4	Men's & Boys' Cloth		
		Furnishing Depart	tments	36.1
en's Ready-to-Wear		Women's Ready-to-V	Wear	
ins	30.7	Departments		36.3
Chains	31.8	Shoe Departments .		37.2
ture Chains	41.9	Furniture Departmen	nts	43.1

¹ Phillips, Charles F. and Duncan, Delbert J.-Marketing, Principles and Methods, p. 14.

Depar Men's Fur

Wome Cha Shoe Furnit

² Ibid—p. 322.

³ Filene, Edward A.-Next Steps Forward in Retailing, 1937, p. 44.

SALES AND OPERATING EXPENSES OF CHAINS COMPARED WITH ALL OTHER¹ STORES BY SELECTED KINDS OF BUSINESS, 1935

	Per Cent of Total Net Sales	Operating Expenses Per Cent of Net Sales
Kind of Business		
United States Total—		
all kinds of business		27.5
Chains		$25.0 \\ 28.3$
Independents and all others		28.4
All others		26.2
Groceries (without meats)		
Chains		15.6 22.8
All others	. 4.1	24.8
Chains	4.9	17.5
All others		19.0
Department stores		
Chains Mail-order (catalog only)	. 2.7	24.7 23.7
All others		32.2
Variety stores		
Chains		27.2
All others	0.2	26.5
Men's clothing-furnishing stores Chains	. 0.4	31.0
All others		28.5
Women's ready-to-wear stores		
Chains		28.8
All others	1.8	28.9
Chains	0.8	29.6
All others		32.0
Filling stations		
Chains		$29.9 \\ 25.4$
Furniture stores	4.0	£ 20.4
Chains	0.3	36.3
All others	1.8	34.6
Restaurants, cafeterias, lunch rooms		-1-
Chains		$54.5 \\ 49.2$
Drugstores	1.0	40.4
Chains	0.9	26.1
All others	2.8	28.1
Jewelry stores	0 1	40 1
Chains		49.1 41.2
		11.0

¹ Stewart, Paul W. and Dewhurst, Frederic-op. cit., pp. 138-9.

MINIMUM RETAIL MARGINS ON PRODUCTS IN THE DRUG TRADE IN CALIFORNIA UNDER THE CALIFORNIA FAIR TRADE LAW, JULY 1934

Classes of Products Nun	nber of Items	Class averages
Antiseptics (including contraceptives)	62	29.07
Cosmetics	335	28.46
Cod liver oils	49	30.28
Cough and cold preparations	24	34.79
Dentifrices	34	27.79
Deodorants	14	25.29
Effervescent salts	13	24.91
Eye preparations	6	28.66
Food, tonics, etc.	55	27.91
Foot remedies	51	30.44
Hair preparations	. 40	25.29
Hospital supplies	37	36.05
Household remedies	. 13	33.31
Laxatives	. 24	30.97
Liniments	. 13	26.52
Mineral oils	. 10	30.29
Miscellaneous	. 42	30.73
Nasal preparations	. 6	30.60
Ointments	. 30	29.06
Patents	. 43	31.74
Pharmaceuticals	. 24	28.37
Pills, tablets, capsules	. 42	31.19
Salts	. 4	41.45
Shaving supplies		22.64
Soaps		31.94
Sundries	. 113	41.85
Suppositories	. 8	34.23
Tobacco	. 44	
	. 44	18.95

Regardless of which one of the three sources of "operating expenses" we use, it is clear that 20 per cent or more on sales would not pay the operating expenses. Therefore, "chain and department store groups that were forced to increase prices" after fair trade had been using drug trade items as "loss-leaders". Further, even with the minimum fair trade prices net profit would be very moderate.

The imputed implications of conclusion number 4 of the Federal Trade Commission Report are not revealed by these figures.

Criticism of View Number 5.

The Committee admits that resale price maintenance "prevents two possible forms of monoplastic practices which tend to reduce unreasonable retail prices, namely the use of monopoly power at the retail level and the "loss-leader" device".

However, the committee believes that more direct and desirable weapons can be found to curb "loss leaders" but fails to give indications of its thinking in this respect.

The committee appears to be casting about for some sort of a reason for introducing the completely impractical device of maximum prices.

¹ Grether, E. T .- op. cit., 480-481.

The committee states on page 22, "Changes which remove that part of the consumer price from the influence of competition seriously restrict the working of a competitive system". *Maximum* prices certainly "remove that part of the consumer price from the influence of competition . . ."

The manufacturer of branded or trade-marked goods who already sets the price of his goods to the wholesaler, under maximum prices, would be given the right to prescribe and *enforce* the maximum price at which the retailer could sell his merchandise. This would give the manufacturer an absolute power over the margins of the retailer. This is inconsistent with the notion of a free economy and would give the manufacturer undreamed of power. We would be exchanging cut-pricing for "black markets".

Criticism of View Number 6.

Resale price maintenance no doubt encourages the operation of more retail outlets and exerts an influence against the concentration of economic power in the retail field . . . first, the high margins determined by resale price maintenance . . . second, high margins merely transfer competition from prices to services and often result in wasteful forms of competition in services thus increasing costs. Moreover high margins provide a strong inducement to enter the retail field, so that a too great number of outlets, coupled with the consequent reduction in the individual volume of sales and profits, may result. Thus resale price maintenance may perhaps contribute more to discourage efficiency than to protect small business.

The committee has not produced a single piece of evidence to support their claim that high margins exist under resale price maintenance. This, I think, was adequately shown in the criticism of view number 4.

To the charge that resale price maintenance unnecessarily increases the number of outlets, let us look at the figures, keeping in mind Oxenfieldt's statement that "the greatest effect of resale price maintenance probably occurred in the drug trade." United States figures are used because comparable figures exist for before and after the passage of Fair Trade laws.

In 1925 there were 60,000 drug stores in the United States—approximate figures based upon the 1925 estimates of the Statistical Abstracts of the United States, 1930.

In 1931, there wre 61,000 drug stores—Practical Druggist, October, 1937, p. 37.

		P	opulation Per
Year	Population of U.S.	No. of Drug Stores	Drug Store
1880	50,000,000	28,000	1800
1900	75,000,000	38,000	2000
1932	120,000,000	61,000	1967

from American Druggist, March, 1932, p. 25

Year	Population	No. of Drug Stores
1929		58,258
1935	****	56,697
1939	(130,000,000)	57,903

From Nolan, Herman C. and Maynard, Harold H.—Drug Store Management, 1941, p. 5.

There were 50,000 drug stores in the United States in 1948 according to Paul C. Olsen in Marketing Drug Products, p. 104.

¹ Oxenfeldt, A. R.-op. crit., footnote bottom of page 427.

According to the National Association of Boards of Pharmacy there were 49,060 drug stores in the United States on January 1, 1950.

The population of the United States in 1950 was slightly over 150,000,000.

These figures reveal that since the passage of the Fair Trade laws there has been a decrease of nearly 8,000 drug stores instead of the contemplated increase as suggested by the Committee.

Moreover, these 49,060 drug stores, most of which are operating under Fair Trade laws, are serving an average of more than 3,000 persons per drug store against a maximum of 2,250 in any previous year (1939). This certainly indicates greater rather than less efficiency under resale price maintenance.

Almost 9 per cent of all drug stores are operating at a loss now, compared with 4 per cent in 1942. Approximately 10 per cent of these stores have a net profit of less than 2 per cent of sales, compared with 8 per cent in this category in 1942. Those with a net profit of 2 per cent to 4 per cent approximate 18 per cent of the total, compared with 17 per cent in 1942, and those with a net profit of more than 5 per cent approximate 63 per cent of the total, compared with 71 per cent in 1942.¹

To interpolate, costs—rent, fuel, electricity, phone rates, wages, taxes have increased for the proprietor of a drug store. While the cost-of-living index has skyrocketed, prices of fair trade merchandise have been sticky,² thus reducing net profits in the retail drug field.

Criticism of View Number 7.

Resale price maintenance no doubt helps to protect the reputation of branded goods . . . However, the Committee is not convinced by the argument that the reputation of branded goods suffers from normal price variations . . . normal price reductions will not cause serious problems to the manufacture.

Protection from normal price reduction has never been a claim of those who have urged resale price maintenance. It is the abnormal price reductions such as "loss-leaders" and predatory price-cutting that resale price maintenance seeks to prevent. No better illustration is available than the current suit of the Sunbeam Corporation of Chicago against the R. H. Macy & Company of New York for \$6,000,000. The suit charges that the defendants "conspired to restrain and monopolize trade by using their vast economic power to cut and fix prices of Sunbeam's products at a level where it has become unprofitable for their competitors to handle them."

¹ Andrews, B. B.—(Former Economic Adviser, United States Government) The Merck Report,, January 1950, p. 12.

² See page 22.

³ Globe and Mail, Toronto, October 31, page 1.

Conclusion

The preceding pages show that the Interim Report of The Committee to Study Combines Legislation presents inadequate evidence on which to base legislation for the outlawing of resale price maintenance as an effective instrument for the lowering of the cost of living.

HORACE J. FULLER

APPENDIX B

Presentation

by

The Ontario Retail Druggists' Association

to

The Joint Parliamentary Committee
Appointed to Study
The MacQuarrie Committee Interim Report

on

Resale Price Maintenance

To the Joint Parliamentary Committee appointed to Study the MacQuarrie Committee Interim Report on Resale Price Maintenance

The Ontario Retail Druggists' Association appreciates the opportunity to make representation to your Committee and to express its views on "Resale Price Maintenance".

There are about 1800 druggists in the Province of Ontario, of which 1418 have paid the Annual Membership Fee in this Association. The object of the Ontario Retail Druggists' Association is—to advance the scientific and professional aspects of Pharmacy and to promote the mutual rights and interests of Retail Druggists in Ontario and to develop methods and ideals in merchandising.

Without canvassing the opinion of each of our members on the question at this time, we believe we can say from the evidence of former opinions expressed, that every druggist in Ontario feels that retail price stabilization gives small business a chance of survival without detriment to the consumer.

Our membership represents the neighbourhood druggist who we feel, is most useful to consumers in his district, through convenient availability of goods and through actual services rendered. He must, of course, have a fair margin of profit on his sales to carry his overhead and cover the services he renders.

If the manufacturer is prohibited by law from establishing a resale price on his product and the large operator resorts to price cutting, the power of dollars alone will destroy the small independent retailer. The small independent retailer cannot compete with the big operator in a price war because his resources run out. If he does not meet the slashed prices of the price cutter, his customer will desert him; if he does meet them, he either sacrifices the honest profits he needs to keep his business going, or he has to cut wages or resort to mark-up practices of the price cutters on other merchandise of which his variety is smaller. And if he discontinues the sale of cut-price goods, his customers will go elsewhere to fill their needs. Whatever he does he stands to lose and our economy stands to lose with him.

Business men generally from experience know that no one can take a loss consistently and continue to cover his operating costs to say nothing of making a profit, yet that is what price-cutting merchants profess to do.

As retailers and consumers we believe that price-cutting has been a potent weapon of monopoly—a means of killing the small rivals, injurious to the goodwill and business of the producer and distributor of identified goods and injurious to the general public as well. It deceives the customer when used as a bait for the purpose of getting customers away from a competitor, creating the false impression that since he undersells a particular item identified by a trade name and a standard price, he sells all other items at a similarly low price. This incites retaliatory cutting to below cost, preventing each one from earning a reasonable profit in the sale of the item, and consequent impairment of the manufacturer's trademarked goods, especially when the price level reached is so low, that no dealer will be interested in handling the goods. This may permanently cut off some of the manufacturer's avenue of distribution; his advertising is wasted, because it may become ineffective through lack of distribution and he faces all this because at the outset his products are in demand, are of recognized value and are known to be worth the normal price.

Price cutting injuries the consumer. The use of loss leaders builds up phoney bargain psychology in consumers and they eventually are persuaded to buy goods which are not so well known on which the retailer must make a larger mark-up in order to replace the loss on items sold at cost or less.

We believe retailers are continually studying ways and means of distributing merchandise efficiently and economically in order to retain sufficient consumer patronage and to remain in business, and the right of a manufacturer to stipulate the conditions under which his products are to be distributed should be recognized, subject to the reservation that he may be required to discontinue his policy if a competent authority concludes that it is against the public interest.

In the past years a number of laws supported by public opinion have permitted prices to be set. For instance—Minimum Hour and Wage Law, Milk and Butter Prices, Freight and Passenger Rates, War Time Prices and Trade Board and Wheat Boards. A policy found to stabilize business in Government operation, should, we think, be extended to a manufacturer who wishes the right to prevent his product being consistently sold at less than the overhead cost of efficient retail operators, and to provide an orderly flow of his commodity through the distributive channels.

The position of the independent producer who establishes the price at which his own trade-marked article shall be sold to the consumer, we think should not be classed with that of a combination or trust which controls the market and fixes the price of other than his own product.

The independent producer establishes the price at his peril—the peril that—if he sets it too high, either the consumer will not buy, or, if the article is popular and the profits high, he will invite even more competition, which will regulate his set price.

The Consumer pays the price asked because he deems the article worth that price as compared with the costs of other competitive articles.

If the producer of a trade-marked article is prohibited from maintaining his established price, competition is created to such a ruinous extent that no retailer will want to handle the product and the producer will be forced to sell to the consumer direct or establish agencies, thereby imposing upon the small retailer a serious handicap and the resulting displacement of small business would be a serious economic loss.

We believe the manufacturer's fixed resale price constitutes a code of business morality which provides the following tangible benefits for consumers:

- It keeps prices down:
- It prevents deliberate deception of the public;
- It helps to preserve the efficient retailer, and through him, our system of mass distribution;

It helps to keep quality trade-marked brands available to consumers at low mass produced costs;

It preserves the consumer's power as a final arbiter of prices;

It is one of our most effective safeguards against monopoly by preserving the greater number of outlets.

From all the evidence we can gather we think that the principle of resale price maintenance is not detrimental to the public and we would not be in favor of legislation which would deprive an individual producer of the right to prescribe and enforce resale prices for goods bearing his trade mark and brand name.

To summarize—Where Government meets commerce two tendencies are seen—First—Liberty of action to individuals; Second—Regulation to protect the public. The Pharmacists usually think that (1) should be left all possible latitude and that (2) should only enter where the public interest is quite clearly invaded. They think that "Fair Trade" programmes used in America to combat dangerous monopoly, should be avoided as long as possible, and that it is better to maintain the health of distribution through the play of free effort. The Pharmacists believe, that Regulation, such as "Fair Trade", may not be needed in Canada, so long as nothing is done that prevents the individual manufacturer acting alone, from stabilizing the terms and prices at which his brand name products shall be handled at wholesale and retail, his right to choose his customers for any reason, and to use that freedom of choice to regulate commerce in his own brand name item.

The Pharmacists do not think there is any chance that a "Combines Act" will prejudice the liberty of individual manufacturers in this matter.

And if this liberty is assured, the disorders of excessive price and publicity competition at the retail level, which raises the average costs of distribution, and seems to prejudice rather than to further the interest of the consumers as a whole, are not so likely to multiply and the need for regulation, such as "Fair Trade", with all its expensive processes, will probably not arise.

Respectfully submitted,

HAROLD SMITH,

Secretary-Treasurer and Business Manager, Ontario Retail Druggists' Association.

Submitted November 21st, 1951.







HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament 1951

(Second Session)



JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, NOVEMBER 23, 1951

WITNESSES:

Mr. R. A. Harris, Managing Director, C. H. Smith Company, Windsor, Ontario; Mr. Arnold Rands, Food Consultant, National Food Division, Retail Merchants Association; Mr. Milton Shaeffer, Vice-President, Retail Men's Wear Association of Canada; Mr. Lloyd McKee, Electrical Housekeeping, Toronto, Ontario; Mr. R. S. Tinsley, Assistant General Manager, Canadian Retail Federation, Toronto, Ontario, all representing the Canadian Retail Federation.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951



MINUTES OF PROCEEDINGS

FRIDAY, November 23, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Hawkins, Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Dickey, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Shaw, Stuart (Charlotte), Thatcher.

In attendance: Mr. R. A. Harris, Managing Director, C. H. Smith Company, Windsor, Ontario; Mr. Arnold Rands, Food Consultant, National Food Division, Retail Merchants Association; Mr. Milton Shaeffer, Vice-President, Retail Men's Wear Association of Canada; Mr. Lloyd McKee, Electrical Housekeeping, Toronto, Ontario; Mr. R. S. Tinsley, Assistant General Manager, Canadian Retail Federation, Toronto, Ontario, all representing the Canadian Retail Federation.

The presiding Chairman presented the Second Report of the Sub-Committee on Agenda and Procedure, which is as follows:

Your Sub-Committee on Agenda and Procedure met on November 22 and recommends:

- 1. That there be no sitting of the Committee on Wednesday, November 28.
- 2. That the representatives of the Canadian Electrical Manufacturers Association be heard on Monday, November 26; of the Trades and Labor Congress of Canada on Tuesday, November 27; of the Canadian Pharmaceutical Association on Thursday, November 29, and of the Toilet Goods Manufacturers Association on Friday, November 30.

The said report was concurred in.

Mr. Harris was called, tabled a brief on behalf of the Canadian Retail Federation, which is printed as *Appendix A*, to this day's Minutes of Proceedings and Evidence; was heard and questioned thereon.

Messrs. Rands, Shaeffer, McKee and Tinsley were called and questioned.

At 1.00 o'clock p.m., the Committee adjourned until 3.30 o'clock p.m. this day.

AFTERNOON SITTING

The Joint Committee resumed at 3.30 o'clock p.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senator Lambert.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Dickey, Fulton, Garson, Harkness, Hees, Jutras, MacInnis, Mott, Shaw, Stuart (Charlotte), Thatcher.

In attendance: As listed for the morning sitting.

Questioning of the witnesses was continued.

The witnesses retired.

At 5.20 o'clock p.m., the Committee adjourned until Monday, November 26, at 10.30 o'clock a.m.

A. L. BURGESS, Clerk of the Committee.

EVIDENCE

NOVEMBER 23, 1951. 10:30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum. Come to order please.

Our subcommittee on agenda and procedure met after the meeting yesterday and our first recommendation is that there should be no meeting on Wednesday, November 28, to give one break in the week. The second suggestion of the subcommittee on agenda and procedure was that the representatives of the Electrical Manufacturers' Association should be heard on Monday, November 26; that on Tuesday, November 27, we should hear the Trades and Labour Congress of Canada; that on Thursday, November 29, we should have the Canadian Pharmecutical Association back again to complete their submission; and that on Friday, November 30, we should have the Toilet Goods Manufacturers' Association.

At the meeting of the steering committee there was quite a bit of discussion as to whether it is going to be possible for us to finish our work at this session. I think that most of the members were rather daunted by the size of the brief presented by the druggists. I might say that as far as I know it is by far the largest brief that will be presented. It covers the field in which there is the highest degree of price maintenance, sixty per cent, as mentioned by the witness here yesterday.

But the point which bothered me, which I discussed with the subcommittee, and which I have been considering since that time, is just to what extent and in what direction is this present inquiry going. In the views of some of the members now we are having a full dress inquiry into every phase of resale price maintenance; in other words, that we are duplicating the work of the MacQuarrie committee. So I went back to Hansard, to the debate on the setting up of this committee, and I noticed that the reason why this parliamentary committee was set up was that after the government had announced its intention in the speech from the throne of giving legislative effect to the conclusions of the MacQuarrie committee they received requests from many individual merchants, manufacturers and executives of trade associations for an opportunity to present their views, and the setting up of this committee was an attempt to meet their requests that they be given an opportunity in an open committee to present their views as to whether or not resale price maintenance was in the public interest. I might refer the committee to the remarks of the Minister of Justice (Hon. Mr. Garson) page 664 of Hansard of November 2, on the appointment of this committee, and on page 783; and the remarks of the Prime Minister on page 672 are to the same effect. That was the genesis of this inquiry and it seems to me that our primary function, therefore, is to allow these groups who have asked for a chance to state their case in public to appear here. I must confess that, in my view, if we are to hear all the groups who want to be heard and who have filed briefs or who have been asked to file briefs or who have indicated their desire to appear, we will be here until next summer. I myself feel, in view of this study and from talking to members that the primary purpose of this committee, in view of the fact that the government has indicated its intention of introducing legislation, is that we should give an opportunity to those particular associations who are desirous of coming forward to show us or convince us that resale price maintenance is something

which is not just in their interests but in the interest of the public; that they should be heard, and that in the light of the evidence heard we may suggest to the government amendments to the legislation.

And now, I throw the meeting open. I think it is a very important matter for us to see whether or not it will be possible for us to complete our work this session and make a report to the House of Commons. If, on the other hand, it is the thought of the members that we are going to have a full, wide open inquiry, similar to that of the MacQuarrie committee, on this matter of resale price maintenance, then I do not know when we will finish.

Mr. THATCHER: Mr. Chairman, if we are going to hear the briefs which are already turned in-I understand there are a good many of them-I certainly suggest that it is not possible for us to complete our deliberations within the next three weeks. This is a matter which has waited for years, I suppose, to be solved. Surely no good purpose can be served by rushing legislation through in the three weeks that are left before a proper examination has been made. I could understand the government fears that they are going to be accused of stalling; yet I do not see any way in which we could possibly finish this work before Christmas and do it thoroughly. I submit that we might go ahead examining the many briefs before Christmas and then, as soon as the House reconvenes after the New Year, we might start calling in individual companies from each of the major industries. For instance, I suggest General Motors from the automobile industry; with respect to the tobacco industry we might call the Imperial Tobacco; and in connection with the large retailers possibly we might call the T. Eaton Company; and perhaps the Frosst Company of the drug business-firms of that kind who use price resale maintenance, and have them justify their case. Surely if we are going to make a proper examination of this problem from the practical point of view, we must reconvene next session. Understand me, please, I am speaking personally;-I have not talked to Mr. MacInnis-but I for one simply do not see how, in three weeks, we are going to deal with this problem. That is why I say that we should carry it over to the next session. But I am not going to be one who accuses the government of stalling if we are not through in three weeks.

The Chairman: Your view then is that it should be a wide open inquiry in every phase of resale price maintenance, notwithstanding the fact that this committee was set up to give manufacturers and retailers who desire to protest against the conclusions of the MacQuarrie committee an opportunity to come forward and present their views to a parliamentary committee.

Mr. Thatcher: I certainly think the committee should have a chance to do its job properly. The members cannot reach a conclusion on this matter in three weeks.

Mr. Shaw: Mr. Chairman, it occurs to me that what we are discussing right now is something which should have been discussed ten days or two weeks ago, although, possibly, it is not yet too late to make a decision on this aspect of the matter. Provided we have not put ourselves in the position where we are going to be unfair to someone.

I was under the impression from the beginning that we were not to canvass the entire field canvassed by the MacQuarrie committee. In fact, I personally felt that that would be ridiculous, but it appears that thus far that is exactly what we have undertaken to do. Now, if it is not too late let us make a decision.

Mr. Beaudry: On a point of privilege, Mr. Chairman. Yesterday you found it necessary and made it known extremely politely that I curtail my examination of a witness after, roughly, twelve minutes. I think every member of the committee feels as I do that that did not allow me to bring out some facts which I thought were salient and I for one very definitely feel that if

we have to rush the conduct of our affairs to the point where members of the committee will leave sessions or the entire series of sessions and not feel satisfied that they have explored all the avenues of truth, I think our committee so far as I am concerned will not have been conclusive and fully satisfactory to each member.

The CHAIRMAN: At the moment I am puzzled about this point of privilege. You are just speaking the same way as anyone else would want to speak. I cannot follow your point of privilege.

Mr. Beaudry: Well, my privilege is that yesterday while asking questions the Chair suggested to me that I stop asking question because other members wanted to ask some.

The CHAIRMAN: Yes, I did.

Mr. Beaudry: Which I agree was quite honest and polite procedure. Well, I submitted to that but I had not finished asking questions of that particular witness and if we have to hurry our examination of witnesses to the point where we have a deadline, I and other members of the committee will not be able to ask the witnesses questions we want to ask.

Hon. Mr. BEAUBIEN (Joint Chairman): Is that not why we arranged to recall the witnesses next week?

Mr. Beaudry: I agree, but I do not think we can finish in time unless we abrogate the members' privileges of examining to the fullest extent.

The CHAIRMAN: Mr. Beaudry has made a suggestion which I do not think is a point of privilege. What I would want the members to act upon is whether this is to be a full, all out inquiry. If it is there will be tremendous questioning, but if we are getting down to the point of resale price maintenance and the reasons for it, the points are almost identical by each witness as he comes forward, and in the briefs which we have received from the other groups opposed to the practice their arguments are almost identical too. I would think next week we will have exhausted the case for and against resale price maintenance.

Mr. Fulton: Well, isn't that what makes it imperative that not the scope of the committee be widened but the details be very exhaustive? I do not take it—and certainly hope I should not take it from what you have said—that in your view this committee was set up to afford a sounding board to hear those who are opposed or in favour of resale price maintenance because it is not necessary to use members of parliament in that way; nor do I take it that the intention was simply to have us approve the proposal that legislation should be introduced. In other words, sit here for three weeks and then provide the facilities for the government to say, "Well, we did not do this ourselves; we had the approval of a parliamentary committee." I do not believe that either of those purposes was the reason why this committee was set up. Surely the committee was set up not to directly criticize the MacQuarrie report but nevertheless to satisfy ourselves whether or not we agree with the MacQuarrie report and its recommendations, and the MacQuarrie report recommends that there be introduced legislation making resale price maintenance illegal. Now, that is a very, very big question and the only way it seems to me in which we can satisfy ourselves as to whether that recommendation is sound and should be acted on is, firstly, to hear the views for and against the proposal, as you have stated; and as you have stated there is a striking similarity in those views. But merely for us to hear the views of those such as trade organizations and labour unions who are opposed or in favour of the MacQuarrie recommendations does not, I think, assist us to make up our own minds. In my view that process can only be done properly if we send for

representatives of the automobile industry, representatives of the tobacco industry, representatives of various individual industries, to get down to hard facts and figures as to the experience and the practice in their industry as to what would be the effect of eliminating resale price maintenance, what would be the effect of that on prices, how would that affect the consumer initially and in the long run. It seems to me that only as a result of that sort of process will I be prepared, as far as I am concerned, to say whether I approve or reject the recommendations of the MacQuarrie Committee. It seems to me that was the process we were asked to undertake when we were set up to review the Mac-Quarrie report. Therefore, I do not see there is any possibility of concluding that sort of an inquiry before Christmas, and I agree with Mr. Thatcher that although there may be, superficially, some suggestion if we delay our report that we are sort of stalling, but I will be one who cannot make that criticism, for I do not believe we should rush this matter. If the MacQuarrie report had not been referred to us it would be different, but now we are committed to a long study, because once having embarked on this inquiry we will not be doing ourselves justice, and the economy of the country may be done a great harm were we not to go into the details and make a sound recommendation.

Mr. MacInnis: As Mr. Thatcher says, I have not even discussed this matter with my colleagues on the committee, but it seems to me that what this committee was appointed to do, as the chairman said, is stated on page 664 of *Hansard* of November 2. I am quoting:

"The joint committee will therefore be directed to consider the MacQuarrie Committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon."

In considering that report we were to hear, if they cared to make representation, some of those who made representation to the MacQuarrie Committee, and the purpose in setting up this committee was that those representations would get publicity which they did not get from the MacQuarrie Committee. In my opinion we are not here to discuss every phase and every item that is covered by resale price maintenance. We are here to consider the principle of resale price maintenance and it is the same principle whether it is in the drug store, clothing business, or whatever it may be, and after we have considered its effect on one industry we have its effect in all industries, and that should not take us until Christmas. I took this position when speaking on the question in the House, and I must take the same position now, that there is enough evidence not only before this committee but before the government and before parliament through all the investigations that have taken place from 1926 on to enable us to make a decision in the matter and I think that it would be bad policy indeed to keep on hearing these representations till the House would have to close in order to let us get home for the Christmas holidays.

Mr. Beaudry: We are appointed to inquire into the interim report of the MacQuarrie Committee. I submit that if we try to accelerate or try to complete our investigation at a definite date we might find ourselves in a position of having determined on a principle on which the original body appointed to examine the principle might not yet have made a final report.

Hon. Mr. Garson: Well now, Mr. Chairman, that is entirely contrary to the facts because—

Mr. BEAUDRY: I did not know.

Hon. Mr. Garson: If my honourable friend does not know, he would have known about it if he had listened to what went on in the House because it was explicitly stated, not once but several times, that while this was an interim report in the sense that it was made before the final report was received, as far as resale price maintenance was concerned it is the final report of the MacQuarrie committee. So that my hon, friend need be under no such apprehension as that which he has just voiced.

Mr. Beaudry: I was not in the House at that time, but I am glad to have that explanation.

The CHAIRMAN: Mr. Carroll?

Mr. Carroll: Might I ask to whom notices were sent? To what organizations were notices sent by the secretary, or by whoever sends out such notices?

The Chairman: The procedure generally, as Mr. Garson has said, was to urge the receipt of representations primarily from those merchants and manufacturers who wrote in, or, who through the press said they felt there should be a public hearing, so that they could put forward publicly their points of view. Therefore, when we were set up, we wrote to each of the people whose names had been supplied to us by Mr. Garson, as well as to those who had publicly stated their objections to the recommendations contained in the MacQuarrie committee report. Many of those who made representations to the MacQuarrie committee gave their briefs to the press; and those groups were advised that if they cared to make representations, thier briefs would be circulated to the committee.

The briefs would fall into three categories: those which would be merely filed, and those which would be printed as an appendix to our proceedings, so that people who are not here and who had not received copies through the mail, namely, our readers across the country, might read of the proceedings and have the benefit of the views given; and finally, those briefs on which the committee might express a desire to have further information.

A brief is a submission of principles, as far as that group is concerned; but the people who submitted briefs were told that they might expect to be called, and that they should be ready to be called in case this committee decided, after reading the briefs, that it would like to have further information on certain points.

Mr. CARROLL: Have they in some way or other communicated with the committee?

The Chairman: Yes. A few have turned in briefs. Others have indicated that they did not care to turn in any briefs, and others have said that the views which they expressed before the MacQuarrie commission should stand. The people who believe there should be legislation against resale price maintenance have indicated some desire that the government go ahead with the MacQuarrie commission report. It is those people in the trade who are against resale price maintenance who have the greatest interest at the moment, since they asked for an opportunity to put forward their point of view. Therefore they are the ones who have shown the greatest interest in it.

Mr. Carroll: Have there been any other associations, retail or wholesale, who have asked for permission to file briefs, outside of those you have notified?

The CHAIRMAN: Other briefs have come in through the publicity we got in the press. Let me say that we are more than willing to have any briefs and they will be circulated among the members.

Mr. Carroll: I would be the last man in the world to curtail information that this committee should have; and if by going ahead in a more or less fast way we are not going to get a full picture of the whole thing, I suggest that we wait until we can get a full picture. But if, as we go along, we find out that we have everything that we have been asked to take cognizance of, I would say, if we have done that, then we have done our job. If we can do it within the prescribed time, all well and good; but if we cannot, then, that is another question.

The CHAIRMAN: Senator Lambert?

Hon. Mr. Lambert: Am I right, Mr. Chairman, in assuming that the MacQuarrie commission investigation was a direct result, or might one describe it as a carry-over from the price inquiry made by the Curtis Commission?

The CHAIRMAN: The Minister of Justice could answer that.

Hon. Mr. Garson: I think probably I had better make a brief statement about the situation. I think it is only a carryover in the sense that the previous Curtis inquiry report was available to us and, in the course of reading it, naturally it would affect our opinion on the matter. Other than that, this is certainly not an outcome because the MacQuarrie committee, when set up, was instructed to cover the whole ambit of the Combines Investigation Act of which this subject of resale price maintenance is only one part.

The committee was appointed in June of 1950 and it was hoped they would have a report ready across the whole field so that we might consider

legislation relating to the whole of the Combines Investigation Act.

Hon. Mr. Lambert: You are referring to the MacQuarrie Commission now?

Hon. Mr. Garson: Yes, it is the MacQuarrie Commission I am referring to now. They went into these matters very thoroughly, starting in June of 1950. As Mr. Beaudry has said, they are not finished with the entire work yet, but they had their work on resale price maintenance brought very nearly to completion this fall and we asked them to let us have an interim report before the main report came. This interim report was to cover their completed work on the subject of resale price maintenance.

Now, while there may be differences of opinion as to the competence of the MacQuarrie committee we have never had any other view from the time we appointed it but that it was a thoroughly competent committee, and that it has done a thoroughly complete job. It has taken a long time to do it and has gone very thoroughly into the whole matter. It did receive extensive briefs, and had long discussions. It did not curtail discussions in any way and it has done a job which if this committee were to do it would take from now until at least next summer; and we thus could never contemplate any legislation in the main session of parliament.

We received this report and the commentaries of the various officials of the Combines Investigation Department concerning it. They perhaps have more detailed and practical knowledge than any other group of men because they make their living enforcing the Combines Investigation Act. With the advantage of their views in the matter, we fully accepted the report. As some of the speakers who have just spoken in this committee have indicated, we, in the speech from the throne and in the debate in the House of Commons, committed ourselves to the acceptance of the report and to the introduction of legislation based upon it.

Then, from organizations who had made representations to the MacQuarrie committee, we received submissions to the effect that they quite conscientiously and honestly felt we were in error in accepting the report and that the report was in error. They said: this resale price maintenance is a practice which has prevailed in business for a good many years and we would like you to hear us before you act on this report, in spite of the fact that the report is in part based upon our own representations. They said: we honestly think the MacQuarrie committee is wrong, so give us a chance to convince you that it is wrong and that you are wrong in accepting it.

Not only to them, but in the House of Commons, we said in the statements made by the Prime Minister and myself to which the chairman referred a moment ago:

All right, in view of the fact that this practice has prevailed for all these years and it is an important matter, we have no objection to hear these representations from you; but we think it would be very much preferable to have them heard by a parliamentary Committee rather than by members of the cabinet because in this way the public will have a chance to hear the merits of the pros and cons of this issue. The thought that we had in passing the resolution in the House of Commons sending this matter on to this committee was that the committee would hear these views of the various organizations. If, as Mr. Carroll said a moment ago, it appeared, during the course of the representations which they made as the hearings went on, that they were able to discharge the onus which is upon them of showing that the report is not in order, and made it appear there was some doubt about the validity of the report, then I think this committee would be warranted in digging into all the same matters the MacQuarrie Committee had considered. But if we get from the representations that are made before us no argument that convinces us that there is anything wrong with the report I cannot see where we have any conscientious duty to go over the whole field that has already been covered very thoroughly by the MacQuarrie Committee. To do so would be a gigantic job and one that was not contemplated when this committee was set up. The quotation the chairman made from my remarks in the House of Commons bears out everything I said this morning, but less there should be any misunderstanding on the very points I have been discussing, we inserted, after I cleared it with my colleagues, this paragraph:

It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the speech from the throne.

Now, if there had been any doubt from my general remarks about what the intention was in setting up the committee, it was certainly cleared up by that expressed paragraph. And what is the reference itself?

That a joint committee of both houses of parliament be appointed to consider the interim report of the committee appointed to study combines legislation, tabled in the House of Commons Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

In other words, we were instructing the committee to implement what we had announced in the speech from the throne unless it appeared from representations made before it that there were very substantial reasons why

they should not do so.

Now, I must say, speaking only for myself, that there has been nothing that has transpired in this committee up till the present time that would move me to think that the government's decision was incorrect in any way. It may be that the gentlemen we have before us here this morning or other bodies will raise a serious doubt in our minds about the validity of that report. Until that doubt is raised I am strongly of the opinion that it would be quite an improper performance of our function to go delving into all these details into which the MacQuarrie Committee went in order to reach their opinion. It is not as if the subject matter had been sent to us to make a report ourselves without the benefit of a previous detailed consideration by a highly competent body. It is not as if there were any doubt about government policy on the matter. We did not send the matter to the committee to enunciate policy. We had announced our policy before we sent it to the committee.

The whole purpose of the committee was to see whether there was some substantial reason for reconsidering the report of the MacQuarrie Committee. If no substantial reason emerges, then I say that there is no reason why we should go into these details.

Hon. Mr. Lambert: May I continue. I asked first of all about the Curtis Commission. My impression is that the inquiry, under the reference given to it, proceeded to a certain point. It held a wide open inquiry, free to the press, free to all the publicity that could be given to it, and it sat pretty much during 1949, I think, and its report came out in 1950. However, it left the suggestion that further inquiry might be made into the field that is now covered by the MacQuarrie Committee. I think it is very important in considering this matter now to associate the MacQuarrie report and the inquiry which we are making into the MacQuarrie report with the beginnings of this whole undertaking, which is the Curtis Commission's Prices Inquiry. Now, the essential instruction in connection with the price inquiry by the Curtis Commission, the essential instruction given by the Prime Minister of that day was that it should bring to bear upon the situation the whole moral effect of public opinion in this country and that it was not intended to legislate particularly or to witch hunt for particular factors or situations. It was, rather, an investigation of the economic situation which brought about the suggested complaints about prices, and I submit now, as I did in the beginning here, that it is a mistake to set down a deadline or attempt to set down a deadline in connection with this inquiry. I do not suggest that this committee should undertake as wide and as detailed an inquiry as the Curtis Commission did, but I do submit that the MacQuarrie report does not begin to approach, and I do not think their investigation has begun to approach, from the public point of view, and from the point of view of a democratic interest in this whole subject, the work that was done by the Curtis Commission. The MacQuarrie report is a very well stated summary; someone has compared it to an obiter dictum of the Supreme Court on arguments, and I think that is what it is. There is not a word of evidence given in it. There is a summary of arguments, pro and con, on this subject, but, to my way of thinking, it is something that invites me, as a member of parliament, to reflect back to the people of this country public opinion, to which I am responsible, some degree of evidence to support the conclusions of the MacQuarrie report. That is the only point I would like to bring out.

Mr. MacInnis: Mr. Chairman, might I quote from the Royal Commission on Prices what they said on this point in their report. This is the report of the commission that Senator Lambert referred to as the Curtis Commission. It is to be found on page 41 of the Report of the Royal Commission on Prices. I read:

Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative. In view of the extension of this practice, we recommend that the Combines Investigation Commission give careful study to this problem with a view to devising measures to deal with it.

Now, I understand and I want to say this, because there is the impression that the MacQuarrie Committee did not give this anything except superficial consideration, that if I remember the remarks of the Minister of Justice in introducing the resolution, I think he had in mind—if he did not quote from it—this recommendation, that it was what the MacQuarrie Committee was asked specifically to investigate, this aspect of resale price maintenance, and the MacQuarrie Committee, in my opinion, has done that after due consideration and investigation.

Hon. Mr. Garson: Might I refer just for a moment to Mr. MacInnis' remarks. He is absolutely right in what he remembers. In the initial invitation for briefs in this matter the MacQuarrie Committee singled out for special consideration the subject of resale price maintenance, and what Mr. MacInnis says is quite accurate.

Mr. BEAUDRY: In dealing with an entirely different subject, I am quite in sympathy with Senator Lambert's remarks, and in order to expedite matters, since we have very little in the way of concrete evidence so far before us, and since it is a laborious task to elicit it from witnesses, I would like to know whether we could not get from official sources a definite set of figures that we would otherwise have to draw from every witness. If I may I would like to suggest some that could incorporate in the record, to which we could refer without asking witnesses for it. We should obtain information, for instance, as to the number of independent stores and independent businesses by provinces and by classification, let us say, in 1930, 1935, 1940 and 1950, and information as to the aggregate volume of business per classification. We could have the same information filed for chain and departmental stores, the volume of mail order business done in Canada in these different years, the number of bankruptcies since 1930, again by classification. Frem the Income Tax Department I would also like to have the yearly income of stores and independent businesses, and their numbers. The same for chains. So far as I am concerned, that would give me a basis of statistics to start from when a witness was being questioned, and when he says my business was hurt because there were so many bankruptcies, and so forth, I would like to have before me the figures which either substantiate or contradict these statements. If it were possible for counsel to secure these figures, either from the Bureau of Statistics or from the Income Tax Department or from other sources, it would be of great benefit to the committee.

The CHAIRMAN: You raise the point I raised a little earlier as to the purpose of this committee, which is to see whether this practice is to the advantage of the retailer or the manuafcturer or in the public interest; the sort of figures you are asking for would certainly relate that question as to the manufacturer or retailer, but not as to the consumer's interest.

Mr. Beaudry: I am not sure that a bankruptcy only benefits the retailer. I think it does affect consumer interest to a point.

The CHAIRMAN: You are aware of the point that an excessive number of businesses beyond the number economically required would bring about a number of bankruptcies and they are in the public interest because the cost of distribution when there are an excessive number of distribution centres has a direct relation to the cost of distribution.

Mr. Beaudry: I suggest that if we had these figures on the record we would not waste any time in eliciting them from the various witnesses.

Hon. Mr. Lambert: There is one point I referred to in my remarks that I would like to make myself clear on. There is no word of mine, I am sure, that would suggest that the MacQuarrie Committee had not done whatever work it had to do thoroughly. I am not in any way reflecting on that. What I say is the report as a document on which to make an inquiry contains no evidence. Now, the reference on which the MacQuarrie Committee was set up was this, and I think it is worthwhile putting it on the record:

to study, in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian statutes, and the legislation and procedures of other countries, in so far as the later appear likely to afford assistance, and to recommend what amend-

ments, if any, should be made to our Canadian legislation in order to make it a more effective instrument for the encouraging and safeguarding of our free economy.

Now, as I suggested in my previous remarks, the MacQuarrie Committee was set up largely as a result of the concluding suggestions of the previous commission, the Curtis Commission, largely because their reference was too wide to include a special inquiry into the Combines Investigation Act. Therefore, the suggestion was, it left it open to adopt the suggestion of that commission and it was so adopted, with specific instructions, and I submit that those instructions were considerably more specific, more definite in their point of view than the references to the Curtis Commission which preceded it and which resulted in a very wide open inquiry with evidence that was available to everybody.

The CHAIRMAN: In fairness to the MacQuarrie Committee, I think I should bring out that in the circular letter which they sent out to everybody interested, they mentioned it was set up under the Combines Investigation Act, but there was one paragraph they specifically directed attention to, and that is the sixth paragraph, which reads as follows:

You may recall that the royal commission on prices in their examination of restrictive business practices gave particular attention to the practice of resale price maintenance and recommended that careful study be given to this problem from the viewpoint of its effect on price competition amongst wholesalers and retailers. In view of this the committee invites comments on this particular problem as well as on the Combines Investigation Act generally. In particular, the committee would appreciate receiving extended comments on the tentative conclusion of the royal commission on prices as to the effects of the practice upon the public interest. The matter is dealt with in Vol. I, pages 27, 28 and 41, and Vol. II, pages 256 to 259 of the report of the royal commission on prices as published by the king's printer in 1949.

When the MacQuarrie Committee directed such specific attention to that, we can rest assured that the people who received these letters were aware of that and brought forward evidence they thought necessary to cover that point.

Hon. Mr. Lambert: The MacQuarrie Committee, in other words, invites us to report on their own findings.

The CHAIRMAN: This was a letter sent by the MacQuarrie Committee to the different people who would be interested.

Hon. Mr. Lambert: They linked the two things up together.

Mr. THATCHER: Could the chairman tell the committee how many briefs we have now had, that is including the one today, and also how many others you have invited and expect to come in?

The CHAIRMAN: There are six briefs in at the present time other than the ones we have all received, and there are another eleven which have a possibility of being accepted. I would point out that many of these briefs will be exact duplicates of what the other briefs contained. The committee did not decide we were going to hear evidence on every brief.

Mr. Thatcher: The point I wanted to make is this: you have 17 briefs at this moment. Some of them are very important briefs. We have heard none from the farm organizations, none from the co-operatives. There are several trade unions, perhaps, to come in, and there are a good many organizations in the retail field which have not been filed. If we sit till the 15th of December, as from today we can have 12 possible meetings. I do not see how it is

physically possible for us to go over those 17 briefs, if we do it does not seem reasonable. I think this principle of abolishing price maintenance is all right, but some people have come to us and told us we are going to be hurt if you do it. I do not think that parliament can deny those people at least a hearing, and if they are going to be heard we should at least let them put their case before us.

The Minister of Justice has said that unless something substantial emerges he is certainly not going to change his opinion. I agree with him, but how can anything emerge if we do not give these people a chance to be here and make representations. In twelve meetings that just cannot be done.

The CHAIRMAN: You missed the point in my opening remarks. The labour groups, the farm groups, and so on, have all made reports to the MacQuarrie committee and they have said that they are standing by those positions and they are, in fact, upset by the fact that the government is not proceeding on the basis of the MacQuarrie Report. Those groups are quite content to have their briefs stand and that we should go on and make our recommendations to the government.

Mr. Thatcher: Just talking about the MacQuarrie committee, I do not deny that they are very able men, but I draw your attention to the fact that there was not one businessman on the committee. While they may have had the theoretical approach to the field well covered I am not so sure that they had the practical field covered, and that they were for that reason able to do a proper job. I am strongly in favour of going into the next session.

Mr. Fulton: I believe we cannot decide this unless we consider the position we are actually in. No matter what the reference to the committee may have said I believe the position actually arises out of the terms of reference. We have had referred, by the terms of the order of the House a report by a committee which made certain recommendations. We are being asked to consider those recommendations. Now, the MacQuarrie committee report says that price maintenance should be made illegal and it recommends that it be made illegal. The result of that recommendation would be to make it illegal without reference to whether it is detrimental to the public interest or not.

I may say that the MacQuarrie committee did not say that it was against the public interest, and the result of their recommendation would be to make price maintenance illegal without reference to whether it is or is not against public interest.

The MacQuarrie committee found that on balance price maintenance was against public interest and they proceeded, in their recommendations, to recommend legislation based on that finding. We are invited to approve or reject that recommendation and I do not see how we can say that the word "consider" can be interpreted otherwise. We are invited to either approve or reject their recommendation. How can we approve a recommendation without going behind the mere recommendation itself, and without concerning ourselves as to whether or not price maintenance does advance or retard public interest?

I think by the very fact that we have the MacQuarrie committee report referred to us, a report which proceeds on that basis, we are compelled at least to take a glance at the field which the MacQuarrie committee considered in arriving at their recommendations. If the evidence of the MacQuarrie committee had been summarized in their report or had been referred to us with their report we would not have to do that. Senator Lambert has put his finger on it when he says there is not a vestige of actual factual evidence in the MacQuarrie Report which is referred to us.

It seems, therefore, if this committee is to arrive at a conclusion with regard to the MacQuarrie committee report, which has recommended that price maintenance be made illegal in that it is against public interest, then we must

consider the question of the public interest. The only way we can do that is to hear the briefs and representations of those who want to come here and repeat what they have said before. It is important to my mind that we have the right to send for whoever we want to give us facts and information that the MacQuarrie committee may not have had—in order that we may make up our minds intelligently on their recommendations. The very situation that we are in, as a result of the recommendations in that report, is that we must allow ourselves time to send for persons with those facts and who will give us evidence to make up our minds. Without it, we cannot make up our minds intelligently on the job we have been asked to do—that is to consider the MacQuarrie report.

Hon. Mr. Garson: In relation to the argument just made by Mr. Thatcher and Mr. Fulton, purely as a matter of mechanics, may I say this. This matter has been considered by a competent committee after hearing representations from highly competent bodies such as the Pharmaceutical Association, the Canadian Manufacturers' Association, the Retail Merchants Association, and others. They are not groups of moronic individuals; they are highly intelligent people who know their own business thoroughly and who have advantage of the best advice and assistance which money can buy. They presented their cases before the MacQuarrie committee and the MacQuarrie committee has made a finding.

I should think that our mode of procedure in this committee might well be that we would hear from these bodies who have asked that they be heard. If they are able to show us where serious error has been made in the MacQuarrie Committee Report, then we would be warranted in going on to make this thorough inquiry to which my honourable friends refer. But, I should also think that when you get bodies such as the Retail Merchants Association, the Pharmaceutical Association, the Canadian Manufacturers' Association, and other bodies, if they are unable, even prima facie, to show this committee that there is any reason for doubting the validity of the MacQuarrie committee report, then I for one am quite prepared to confirm by acceptance of that report without going into all of these extensive investigations to which Mr. Fulton refers. I am satisfied that if there is a serious defect in it that defect will certainly be brought out by these representations.

Surely to goodness my honourable friend does not entertain such a low opinion of the competence of these trade associations that he thinks, after they have done their utmost to show that there is something wrong with the report and have failed, that we can go digging around for a year or so and dredge up something which men who have been in business all these years have overlooked? I certainly do not entertain such an opinion.

So far we have not received proof from the Canadian Manufacturers' Association, the Retail Merchants Association, the Pharmaceutical Association, their economists and their lawyers, of any defects in the report. If they are not able to show there are defects then I am not conceited enough to think that I can dig them out when they cannot.

Mr. BEAUDRY: Would the minister allow me a question?

Hon. Mr. GARSON: Yes.

Mr. Beaudry: Is the minister at liberty to tell us what the procedure of the MacQuarrie committee was? We have no way of finding out from the interim report.

Hon. Mr. Garson: I think I am at complete liberty to do so, although I cannot do so for this reason. When we set up the committee we gave it a free hand. The reason we set it up was that the Combines Investigation Act had been in existence and in operation for a period of over a quarter of a century—

without there ever having been made during that whole period an over-all review of its entire operations. We thought that review was overdue and we set up an outside body to do the job. We gave them a complete carte blanche without any limitations at all.

As Senator Lambert has stated, in the first notice they sent out, in line with the Curtis Report, and backing up its recommendations, they laid special emphasis upon the subject of resale price maintenance. I want to emphasize that at no time did we ever seek to control what they did, or in any way inspire their conclusions, or anything of that sort. They were appointed. They were free agents. We regarded them as competent and practical—as practical as any businessmen. If any person tells me that there is a businessman in Canada more practical than W. A. McIntosh I will give him an argument on the subject. He has had a great deal of practical experience and has demonstrated his practicality on many occasions. They were given a perfectly free hand and I am sorry that I cannot accommodate my honourable friend any further.

Mr. Beaudry: I had better explain my question so as not to leave anyone with a false impression. I am trying to find out whether the MacQuarrie committee followed the procedure of having briefs submitted only, or whether they followed our procedure of having a brief and then ferreting out some facts from the witnesses?

Hon. Mr. Garson: Yes indeed, on that score I can, because that was mentioned in the newspapers and mentioned by me in the House.

I have said in the House on two or three occasions that the reasons why the report of the MacQuarrie committee, which is now considerably overdue, was not received before is that after they had received written briefs, these various organizations asked the MacQuarrie committee if they would hear oral presentations and recommendations. They were very glad to do that. As a matter of fact the last time I spoke of it in the House of Commons they still had a request for representations to be heard in September of this year. It has been very thoroughly considered.

Mr. Beaudry: But the minister does appreciate the difficulty brought up by Senator Lambert and Mr. Fulton and with which I quite agree—

Mr. THATCHER: May I ask the minister a question?

Mr. Beaudry: Pardon me, Mr. Thatcher. I appreciate the difficulty of coming to a decision on facts which have been appreciated by four or five gentlemen of undoubted competence, without having those facts before us.

Hon. Mr. Garson: I agree with that and, if these gentlemen this morning, or those from other associations come and lay such facts as they in their wisdon choose to lay before us to indicate that the conclusions are wrong, then my attitude towards an extensive inquiry would certainly change. However, I think that where we have a report from a highly competent body accepted by—I will not say a highly competent government but a responsible government—

Mr. Fulton: Reservations on both points.

Hon. Mr. Garson: —assisted by the advice of its Combines Investigation Act officials who have some modicum of knowledge of the matter themselves—this committee can very well and very safely take this position. If these people are not able to point out any serious error in that report then we are not warranted in supposing that we can dig around on the subject and turn up facts which the MacQuarrie committee did not consider. If none of the opponents of resale price maintenance can do that I am personally not conceited enough to think that I can do such a thing.

Mr. Fulton: I cannot understand why, if the MacQuarrie committee report is of such excellence, it should have been referred to a committee for consideration.

Mr. Beaudry: Oh, well, that has been explained.

The CHAIRMAN: Order.

Mr. Fulton: What you are doing is making parliament a sounding board for some people to come and put pressure on it. I do no believe, sir, that you have decided upon reflection to use parliament in that way. It would not have been necessary to refer the MacQuarrie committee report to this committee and to hear recommendations. However, the report has been referred to this committee—

The CHAIRMAN: Let us get back to the original point on which I opened this discussion and to which Mr. Garson has returned.

The reason for this parliamentary inquiry is that we all know that persons in the trade wanted to make representations. They said that the conclusions of the MacQuarrie committee were wrong—as Mr. Garson has pointed out already. If they can show us from their facts and from their skilled professional knowledge that the MacQuarrie committee is in error then we can certainly have this full investigation.

Mr. THATCHER: Will you give us time to do that?

Hon. Mr. GARSON: Certainly.

Mr. THATCHER: How can you do it in twelve meetings?

The CHAIRMAN: If the MacQuarrie committee is so much in error I would suggest that it is possible for these people to show it in one meeting—if the point is there. If the point is not there then it does not matter whether it is ten, twelve, or fifty meetings.

Once this parliamentary committee was established the onus, in my mind, was on the people who asked for this further investigation to show that the conclusions of the MacQuarrie committee, which have been accepted by the government, are in error. If they cannot do it we certainly will not be able to do it.

Mr. THATCHER: Not without giving them time.

Mr. Fulton: I do not see how we can say whether they are in error unless we place ourselves in a position to know. We can only do that by carrying on an investigation of our own so that we will know something of what they are talking about.

I agree with the minister that we are not experts and the only way we are going to get ourselves in a position to deal with the report is to carry on some inquiries which will make us in some part experts. We cannot do that by staying here reading briefs. We have got to be able to send for people who can give us the facts so that we can form an opinion in our minds and have the mental equipment to assess the arguments of the people coming before us.

The CHAIRMAN: If we were to start from scratch on the whole field of resale price maintenance that is so. I say that this committee has been set up primarily because of requests to the Prime Minister and the Minister of Justice in which people said that the MacQuarrie committee report is wrong, and that legislation based on it is wrong because the committee is in error.

Mr. Thatcher: Are you suggesting that we should not hear the seventeen groups?

The CHAIRMAN: I am suggesting that these major groups who have said that the principle is wrong, and that it is in the public interest to have resale price maintenance, are the people we need to hear. If they cannot show us where the error occurs then certainly we should not start at the grass roots all over again.

Mr. THATCHER: You are quite willing to hear each of these seventeen even if it takes us until Christmas? You are not going to say later that we are cut off?

The CHAIRMAN: The steering committee has already decided, as is the case with the steering committee of every major parliamentary committee in this House, that there is no need to have seventeen briefs if twelve are duplications. We want to have them and we will read them. After all, the major part of any brief is the considered opinion of the group in writing and the questioning is incidental afterwards—clearing up points not already clear to the reader of the brief. We will have an opportunity of reading every brief. Briefs on which members want further information because of some particular point can certainly be held over for hearing.

I say again that as far as my understanding is concerned the reason for this committee being set up was that these gentlemen have asked and have been granted the right to come forward and tell us why the report of the MacQuarrie committee, which the government has accepted, is wrong. Nobody is in any better position to know the details of the trade than these people who are coming before us. As Mr. Garson has pointed out they are well equipped—

Mr. THATCHER: If you give us time.

Mr. Fulton: If that is the basis of our procedure I think it should be made clear to those who give evidence that it is the procedure. The result of the policy you are suggesting is an attack on the MacQuarrie committee report—

The CHAIRMAN: Certainly.

Hon. Mr. GARSON: Yes.

Mr. Fulton: But that is not the basis on which we have so far proceeded. It was not just an attack on the report—analyzing it, disecting it, and saying here it is weak and this is a false assumption. That is the kind of argument you should ask them to bring forward, and it is not the kind of argument I understood we were primarily interested in hearing. We have had the kind of arguments that they themselves used before the committee.

The CHAIRMAN: Of defending their position of saying resale price maintenance is in their interests—

Mr. Fulton: Starting with the assumptions of the MacQuarrie committee, what you should direct their minds to is an attack on those assumptions.

The CHAIRMAN: That is exactly why they have written in to the Minister of Justice asking for this hearing—so they could officially give their views, publicly.

Mr. Fulton: It is quite obvious from the arguments we have heard already and the briefs we have heard already that they were not prepared with that in mind.

Hon. Mr. GARSON: On that very point of view, if my hon. friend will take the pharmaceutical brief which is in front of him and just go to the back of it—

The CHAIRMAN: We are having them back on Thursday because of that.

Mr. Fulton: That is one particular brief which did. I should make that reservation. Yet, there was hardly any questioning on the point of why—

Mr. Fulton: That is not why we are having them back.

Hon. Mr. GARSON: We had a detailed analysis and critique by Professor Fuller.

Mr. Fulton: They were not asked questions about that yesterday.

Hon. Mr. GARSON: They are coming back on Thursday.

The CHAIRMAN: You are a member of the committee, Mr. Fulton, and you had your share of questions yesterday.

Mr. Fulton: All I am saying is that if you are laying this down as a principle upon which we must proceed I think the members of the committee

96281-21

and those who appear before the committee must recognize that their questions and their arguments should be primarily directed towards a detailed criticism of the report—rather than a general questioning on the economic set-up of the business. That is what you are confining us to.

Hon. Mr. Lambert: I think the time will come when we have to consider in this committee the making of a report. At that time I think it will be proper to consider whether or not this field of inquiry has been adequately covered. I would suggest that instead of trying to anticipate exactly how long it is going to take us, that we should proceed with the evidence that is to be submitted as it is arranged, and let the steering committee keep the committee as a whole thoroughly informed of those who wish to be heard. We can then make the decision about whether we should take time for further hearings. I do not think it is possible now to estimate accurately how long it will take this committee to complete its work.

Let us proceed with the briefs that are proposed and let the thing take care of itself. I do not think that Mr. Thatcher or myself will sacrifice our feelings of responsibility in any way, and I do not think any of the other members of the committee will. I think we can decide this question more satisfactorily a little later.

The CHAIRMAN: Mr. Dickey?

Mr. Dickey: I have been trying for twenty minutes to say exactly what Senator Lambert has said. We have been discussing for an hour and ten minutes a question which we are simply not in a position to decide this morning—a question which would be most improper for us to decide one way or another at this time.

I am going to use an example that may be open to some objection but which I think is valid. We are more or less in the position of a court of appeal which has been asked to consider a case on appeal. Now, when we have heard that case we will decide whether or not we will allow the appeal, whether we will dismiss the appeal, or whether we will grant a new trial. That is our position, and I think we should hear the case of the appellant. Then we will be in a position to know what we should do from then on. I move that we should get ahead with the hearing of the briefs.

Mr. Thatcher: As long as we hear all the evidence I am all for it, but it should not be dismissed in advance.

Mr. Fulton: Courts of appeal are usually bound by the findings of fact by the lower court. I suggest we should not necessarily be bound by the findings of fact of the MacQuarrie committee.

Hon. Mr. Garson: I entirely agree with Mr. Dickey that we are in the position of a court of appeal but not hearing an appeal—hearing an application for leave to appeal.

Mr. Fulton: But we cannot go into the facts at all? Is that your position, Mr. Garson? We cannot go into the facts at all?

Hon. Mr. GARSON: No, no.

Mr. Fulton: That is the position of a court of appeal.

Mr. Dickey: We go on the case that is put before us and we arrive at our decision after hearing that case.

The Chairman: I hope this discussion has served a useful purpose. I am sorry that you gentlemen have been delayed but you will understand the position as far as the committee is concerned.

Mr. Fulton: If they do they are very clever.

The Chairman: I think they understand it very clearly—because this is one of the groups which asked for this committee.

Mr. Harris, the understanding is that you should make a short statement or summary of your brief and then there will be questions from the committee counsel, and after that individual members of the committee will question you on points raised.

Mr. R. A. Harris, Managing Director, The C. H. Smith Company, Windsor, Ontario, called:

The WITNESS: Mr. Chairman, Senator Beaubien, and gentlemen: associated with me in this presentation this morning are Mr. R. S. Tinsley, Assistant General Manager of the Canadian Retail Federation; Mr. Arnold Rands, who is an expert in the food distribution trades; Mr. Milton Shaffer of Shaffers Limited of Ottawa, Men's wear trade; and Mr. Lloyd McKee of Electrical Housekeeping, Toronto, who is a proprietor in the electrical appliances trade.

First of all I should like to tell you how we welcome being invited to come here to express our views. The Canadian Retail Federation, I might say for your information, was formed in 1941 at the invitation of the government, to deal with the self same probems which you are considering today, that is, the question of prices. But at that time, a slightly different aspect towards prices existed than does today.

The association has been very closely associated with the development and consideration of trade legislation during the ensuing years, and we have had the pleasure of advising the government upon many occasions with our opinions on such things as the sizing of clothing; and I seem to have some memory, last spring, of a submission concerning considered changes to the British North America Act.

The Canadian Retail Federation has certain affiliates associated with it. If you gentlemen will refer to the appendix to your briefs, I shall not attempt to read them all. But there you will see a list of affiliates of the Canadian Retail Federation.

Mr. PHELAN: Mr. Chairman, there is no appendix.

The WITNESS: There is no appendix attached? Do you wish that I read the list, Mr. Chairman?

The CHAIRMAN: Yes, I think you should read it so that we may have it in the record.

The WITNESS: Canadian Association of Radio and Appliance Dealers, Canadian Bicycle and Sports Goods Dealer's Association, Canadian Federation of Farm Equipment Dealers, Canadian Jewellers' Association, Canadian Restaurant Association, Canadian Shoe Retailers' Association, Ontario Retail Druggists' Association, Ontario Retail Feed Dealers' Association, Ontario Retail Furniture Dealers' Association, Ontario Retail Hardware Association, Retail Furriers' Guild of Canada, Retail Men's Wear Association of Canada, Stationers' Guild of Canada, Retail Merchants' Association of Canada, including the Retail Merchants' Association of Quebec, Retail Merchants' Association of Ontario, Retail Merchants' Association of Manitoba, Retail Merchants' Association of Saskatchewan, Retail Merchants' Association of Alberta, Retail Merchants' Association of British Columbia, National Food Division of the Retail Merchants' Association. City Affiliates: Fort William Retail Merchants' Association, Greater Niagara Chamber of Commerce, Importers' and Employers' Association Ltd. (St. John's, Nfid.), Retail Bureau—Regina Chamber of Commerce, Retail Section—Halifax Board of Trade, Saint John Merchants' Association Limited, Windsor Retail Merchants' Association Limited, and the Moncton Board of Trade.

Mr. MacInnis: Are you speaking for all of these people today, for all of these trade organizations?

The WITNESS: I am speaking today on behalf of the Canadian Retail Feder-

ation who represent the voice of retailing in Canada.

Each of these associations in turn, I understand, sir, have the opportunity of requesting that they make their own submissions. We have made a canvass of opinions and we believe that we represent in our brief, which has been

presented to you gentlemen, the overwhelming majority of opinion.

I should like to point out very briefly that it is not unaminous, because of the retail trade, the retailer perhaps next to the farmer is the most rugged individual that is left in the country, and it is just like an independent family, it is hard enough to get two of them to agree. But there are large stores, and there are some small stores who do not subscribe in their opinion to the brief we have submitted today. However, the overwhelming majority is in favour of price maintenance.

Now, in the brief which has been presented to you gentlemen, if I may, I would like just to review very quickly the main points upon which you

may peg your questions, if you so desire.

Mr. CARROLL: Mr. Chairman, while the witness does not look unhealthy at all, I think he should have an opportunity to sit down if he so chooses.

The CHAIRMAN: Yes. You may stand or sit as you choose.

The WITNESS: Thank you, Mr. Chairman, but if I may, I prefer to stand. Our brief brings out these points: first, that resale price maintenance is a stabilizing influence on our economy. And may I, from this point on, simply abbreviate it by referring to it as price maintenance. Secondly, the public has protection in the brand name and an assurance of quality. Thirdly, minimum resale prices tend to become maximum. Fourthly, price maintenance limits the retailers' margin of gross profit.

Our next point is: price maintenance does not lead to high prices; and again, price maintenance tends to stabilize production.

Now, in opposition to the findings of the MacQuarrie commission, we submit first that price maintenance does not restrict competition unduly.

Secondly, we maintain that price maintenance tends to equalize prices across Canada; that is, in British Columbia and the maritime provinces, they have always suffered from the disparity in freight rates. So with price maintained items the prices tend to be the same throughout Canada as a whole. That, in turn, helps to equalize the cost of living throughout the country.

We further submit—and I say this, gentlemen, with bated breath—that the consumer is not an expert in the value of merchandise, except in use, and the brand protects her and the price protects the brand.

We further believe that price maintenance helps retail advertising, or rather enables national advertising which means greater advertising economy and more economical distribution to the consumer.

We further submit that price maintenance does not mean fixed prices, because they fluctuate up and down. They are only maintained at any one time.

Those, gentlemen, are the pegs upon which we suggest to you that the discussion should fall. I would appreciate it, a little later, if I might, Mr. Chairman, adding one or two points to them, which I think may be helpful. And I would like to clarify this one point.

Gentlemen, I have read over the previous propositions. It may be that I have been rather dense, but I would like to be certain that there is no confusion concerning a combined price which is set by a group of manufacturers who agree that the price of that particular classification of items will be fixed. To that, the Canadian Retail Federation and—I speak as a retailer—

are opposed. We are in favour of price maintenance which means that any individual manufacturer may set and suggest the price to be maintained for which his product is sold. I thank you.

The CHAIRMAN: I think, Mr. Harris, you might be more comfortable if you were seated.

Now, Mr. Phelan?

Mr. Phelan: Mr. Chairman, in view of the lapse of time, I shall ask very few questions so that I shall not trespass on the time of the members.

By Mr. Phelan:

- Q. Mr. Harris, would it be my understanding that you have a council or some sort of organization? Would it be my understanding that you are a council or something of that kind, to represent the views of these different organizations?—A. You mean council spelled c-o-u-n-c-i-l?
- Q. Yes. How is that elected?—A. That is made up of representatives of each of the affiliated organizations together with elected members.
 - Q. And this represents the Canadian Retail Federation?—A. That is correct.
- Q. And you have given us the names of the different groups which are members of that organization?—A. Yes sir.
- Q. I observe that you have stated, and you have also repeated it in your brief, that there is some division among the retailers as to the merits of resale price maintenance. Are you able to give the committee any idea of the percentage of division as to these different views, and how they stand?—A. I cannot give you an accurate answer to that, Mr. Phelan. But our survey showed that the great majority—I think I am correct in saying the great majority, and I refer to Mr. Tinsley—of the affiliates were in favour, making an overwhelming percentage of the members.
- Q. Yes; so that the retail merchants generally are in favour of retaining the resale price maintenance practice?—A. Yes sir.
- Q. And among those in the retail trade you have certain important members who are not in favour of it. Is that a correct statement?—A. That is correct, sir.
- Q. Would I state the position correctly, from reading your brief, that one of the chief reasons, if not the chief reason to maintain this resale price maintenance practice is, so to speak, as an antidote against the loss-leader practice? Is that one of the chief reasons for retaining it?—A. I understand so, yes.
- Q. Is it a reason?—A. Well, what is a loss-leader? I have never found that out.
- Q. I shall ask you that question in a minute. I see a reference to it in your brief and in all the other briefs. And I simply ask you the question: if that is one of the grounds on which you seek to retain resale price maintenance, as an antidote or means of combating the loss-leader practice?—A. If I asked around business what a loss-leader is, I would learn that in the opinion of some dealers a loss-leader is a price at which their full mark-up is not achieved; and in the opinion of others, a loss-leader is one in which they fail to recover their costs; and in the opinion of still others, a loss-leader means merchandises which they have failed to sell to the public, and which the public has found to be unacceptable at the price at which they have offered it, and that any release from that price is a loss-leader.

I think if I were to give a personal definition of loss-leader, the closest I could come to it would be: a loss-leader is a price which does not represent the full mark-on, and which is designed to attract traffic into your place of business.

Q. And in giving that definition, would you assume that that would be a definition of your council?—A. I would not make that assumption, sir.

Q. Are you able to give any definition which would have the full approval

of your council?—A. No sir, I am not.

- Q. I see; yet whatever the definition may be, I see from your brief that that is one of the difficulties that you meet in the trade, and one of the difficulties of the retailer against which the loss-leader is designed to protect.—A. Let me say this: it is significant that under section 498-A of the Criminal Code, to my knowledge no prosecutions have been made with respect to that point during the period that price maintenance has been in practice. Otherwise, price maintenance has been a deterrent, if you like. I would never pretend to say that there have not been loss-leaders.
- Q. But that is one method of combating price maintenance?—A. It is one stabilizing influence.
- Q. You say it is one stabilizing influence. Now, one question more and I am through. Your committee may have had ample time to discuss it, but I notice you have directed your attention or objective specifically to the MacQuarrie report, as set forth on pages 3, 4, and 5 of your brief. Am I correct?—A. Yes sir.
- Q. You have set them forth, and I suggest that those objections have been set forth after due examination of the MacQuarrie report and after due consideration of your trade interests, and that they represent what you want to say in opposition to the MacQuarrie report?—A. After due consideration of the interim report.
- Q. After due consideration of the interim report, and of the retailers' interests, you have set forth what you believe to be the answer to the full objectives of the MacQuarrie report?—A. Yes.

Mr. Phelan: That is all. Thank you. The Chairman: Now, Mr. Boucher.

By Mr. Boucher:

Q. On page 1, point 1 of your brief, you say that resale price maintenance is a stabilizing factor in our economy. What does your group mean by the statement that resale price maintenance is a stabilizing factor?—A. We mean that prices, as you know, are always in movement; they are always fluctuating. Now, let us taken an example of one town or one city, and one retailer in it who cuts the price. It may be that the bank is pressing him, or he may have some other reason; but the price structure immediately is broken in that particular community.

Where price maintenance does not exist there is a strong inclination for other retailers immediately to follow, and their prices will drop. Their prices cannot remain permanently down, because it would be unsound price cutting, and their businesses could not live at such a level of prices. But, because we are human and extremely competitively inclined, a great many retailers would undoubtedly cut their prices down to the level of the first retailer, and in that way the price structure of the community would be fluctuating up and down so that the consumer does not know what the proper value is.

- Q. Do you not think that at times it might bring about a reduction in the overall number of articles sold, for instance, electric refrigerators, stoves, etc., thus causing a reduction in production and consequent unemployment?—A. That price maintenance would do that, sir?
- Q. Do you not think it would affect production?—A. That price maintenance would reduce employment?
- Q. Reduce the total number of articles produced.—A. Reduce the total items to be made? No, sir, I do not.

Q. Would not, in many cases, resale price maintenance retain nominal profit margins to the detriment of profit volume?—A. I would like to answer that a little more fully if I may. I am very glad you asked that question. I checked with the buyers in our own business to get their views on price maintenance and some of them said "we are against it" and I said "why" and they said "beause it does not give us a sufficiently wide margin of profit". There is a very decided tendency, and it is generally recognized in the retail trade that on price-maintained items you do not get the same margin of gross profit that you do on those items which are not price maintained. It is the constant search of every buyer to find other than price-maintained items to keep his maintained mark-up, as we call it, at a level which allows his department or his store to show a profit.

By Mr. Dickey:

Q. Mr. Harris, just on that very point I note that in the second last paragraph on page 1, point No. 2, you state that resale price maintenance applies only to a minority of products sold at retail. Just what do you mean? How have you fixed that? Is that a minority of the number of products or a small proportion of the total trade in all products? — A. It is very difficult to generalize there, Mr. Dickey. In one trade group, one trade classification, the percentage of price-maintained items would be much higher than in another.

Q. What do you mean by a minority of products?—A. That in our view the majority of items are not price maintained. Does that answer your

question?

Q. That is without regard to the relative volume of trade in any particular product?—A. Without regard to classification in any particular merchandise.

Q. Perhaps you can tell us, Mr. Harris, what are the specific fields of the retail trade in which price maintenance is particularly practised?—A. I would say in those fields, those items which lend themselves to branding, which lend themselves to advertising, and where wear and use are an important factor. May I give this illustration? Every gentleman in this room probably has a preference in his brand of shirts and he probably has a preference by name, and he has built that preference out of experience with that shirt, and when he goes back to buy another shirt he wants to be sure that he gets the same satisfaction as he had in the past, so he looks for that brand name.

Q. That is a brand name. I appreciate that, but I was wondering --- A.

May I just complete that?

- Q. Yes.—A. Now, he looks for the brand name. Price maintenance tends to be associated with brand names, again, in items such as a shirt which lend themselves to price maintenance. The manufacturer is jealous of the reputation of his product. He is jealous of the distribution of it, that is, that it should have adequate distribution through retail outlets. that, the manufacturer cannot afford to have his item, that shirt that you are wearing, made a football so that no longer is the retailer interested in selling that shirt on his behalf. May I extend on that a little further? Still taking the instance of the shirt, and let us say it is a price-maintained item at That shirt is a most \$4 for a shirt. The price maintenance is removed. desirable one and most stores in the country would immediately take that shirt and put it on as a loss-leader, as we spoke of a little earlier; if you like, sell it for \$2, because you are going to bring people flocking into the store with that shirt. However, a year from that time you are going to find it awfully difficult to buy that shirt anywhere because it is no longer profitable for the retailer to carry it.
- Q. Yes, I understand your point, Mr. Harris, but what I really want to get from you as representing an association of retailers, is information on the lines of retail trade in which price maintenance is really important. I

would gather from your answer that one of them is retail clothing. Now, what are the others?—A. I would not attempt to define that because there are hundreds of classifications and I do not consider that my knowledge is sufficiently adequate, nor could I possibly be exhaustive here today to define that.

Q. Could you indicate the lines of trade in which it is really important? For instance, I certainly, from my experience in this committee, get the idea that it is of particular importance in the pharmaceutical trade, in the drug trade. What I would like to know, is it of equal importance in the grocery business or the hardware business. If you have any information of that kind it will be helpful to the committee.—A. If I could attempt to define it a little more widely. I think I said where wear and use is an important factor in the products.

Hon. Mr. Lambert: Would you include food products?

The WITNESS: Perhaps Mr. Rands could answer that.

Mr. Arnold Rands (Food Consultant, Retail Merchants Association): In food it is not as widespread as it is in other articles. In food it has been used to offset, again, loss-leader selling and the removal of brands from the market.

Mr. THATCHER: Have you any percentages?

Mr. RANDS: Of the amount?

Mr. THATCHER: Yes.

Mr. RANDS: Possibly in the neighborhood of 15 per cent.

Mr. THATCHER: On groceries or sidelines?

Mr. RANDS: I am speaking only of food, shall I say food rather than groceries.

By Mr. Dickey:

Q. Mr. Harris, you have, I think, clearly pointed out to the committee your view with respect to the importance of price maintenance in relation to branded merchandise. Can you give us any examples of well known established branded merchandise that is competing in retail trade in this country and that is not subject to price maintenance?—A. I could, but I wouldn't, Mr. Dickey.

Q. Well, I do not want to tie you down to particular brands, but there are solidly established brands in general sale in this country that are not subject

to price maintenance. Is that correct?—A. Yes, that is correct.

Q. Mr. Boucher directed his questions to the reference in your brief to the resale price maintenance as a stabilizing factor in the economy. I was interested to see in point 8 on page 2, you use again the word "stabilization". Is that with respect to production? What is the effect of price maintenance

in stabilizing production?

A. Well, right now and in the ensuing months we will be seeing the spring merchandise which is being offered by the manufacturers. Delivery will not be taken on that merchandise until February, March or April, in some cases. Summer bathing suits, for instance, will not be delivered until next May or June. Now, that is a long period for the retailer to be buying ahead, and yet it is necessary for the manufacturer that he should be able to spread his production out in the interest of economy of production over a period of time; so the retailer, if he has a reasonable guarantee that the price at which it will be sold when the season arrives allows him a proper margin of profit, is prepared to place part of his commitment. If, on the other hand, he has no idea what the price will be, then he is very unwise to make any commitments. The manufacturer therefore has to shut his factory down and it remains closed up till the time when there is an immediate demand for the product. That demand comes all of a sudden and he is unable to cope with it.

Q. Do I take from that, Mr. Harris, that with respect to a majority of the products in retail trade in Canada there is this instability of production and that there is not this ordering in advance?—A. It varies greatly between products, classifications of products.

Q. But you do say with regard to a majority of the products in retail trade that there is that instability of production and the unwillingness and inability of retailers to order in advance?—A. I would not answer that categorically.

I would like to give it more consideration.

Q. Does that not arise from the fact that you have told us only a minority of products come within resale price maintenance and if we do not have resale price maintenance that the products not price maintained would place the retailer in that particular position and, in turn, place the producer or manufacturer in the position you indicate?—A. I think that you will find that many manufacturers have found themselves in that unpleasant position in the past six months.

Q. Is that the position of the manufacturers of brands and products that are not price maintained at the present time?—A. I do not feel qualified to

speak for all manufacturers.

By Mr. Fulton:

Q. Mr. Harris, I want to ask you to make some critical analysis, probably, and therefore, if I may, I do not wish to be personal, but I would like to ask you to state your experience, firstly as a retailer for yourself and, secondly, in connection with this organization, the Canadian Retail Federation.—A. I am managing director of the C. H. Smith Company Limited, which is a small department store, as department stores go, employing a staff of some 300. For the past six years, since the conclusion of the war, I have been manager of the business. I was absent for 5½ years before that. Before that time I was sales manager for a company in Canada from 1937 to the outbreak of war. Before that I was associated with the electrical appliance industry, and before that I just studied.

Q. How many years altogether have you been engaged in the retail trade?

—A. Associated with the retail trade?

Q. Yes.—A. For 23 years.

Q. And what is your experience with the Canadian Retail Federation?—A. I have been an officer of the Canadian Retail Federation for the past four

years.

Q. Now I want you to answer a question I am coming to in the light of the discussion you heard here earlier this morning. Do you consider that the MacQuarrie Committee made an adequate and sound study of this problem, that the evidence they heard and the methods they employed were such as to enable them to arrive at an acceptable conclusion?—A. Mr. Chairman, I think it is obvious from the fact that their findings have been protested by so many people that in our opinion the subject was not given the fullest of consideration. The retail trade are not a group of rapacious individuals out to exploit the public. The retail trade is made up—and you might be interested in the figures; to the best of my knowledge there are, I believe, some 700,000 people employed in the distributive trades. There are some 160,000 retail outlets throughout Canada. Now, we are a widespread country with not a very big population, and that population requires service from the retailer and it is service of a varying degree. The retailers are not tycoons. They are the little fellow around the corner who runs a cigar store; the retailer is the widow trying to provide for two children. Retailers are made up of the veteran who has set himself up in the appliance business. Retailers are made up of just folksy people mostly, and they are a good strong background for this country of ours.

Now, they are not thinking people; half of them could not give you a proper definition of price maintenance. A lot of them could not tell you what their margin of profit is, but what they do know is that in the course of time they have learned through hard and bitter experience that if they buy at a price they must sell at a price to stay in business, and out of that they get a living, and not a very big living. I would recommend very strongly to this committee that you take the trouble to look over the balance sheets of 15 or 20 or 30 representative retailers this year and last year and see what the margin of profit is. I am quite sure that your motive, the motive of the government, is to keep the cost of living as low as possible, to deflate any excess profits that may have existed there. If you take a look at the balance sheets of retail traders I do not see where you are going to take that out, because it is not there to take out. The average profit in the retail trade, if I remember my figures correctly, after taxes, runs something like 2.9 per cent. That is not a very big profit, gentlemen, and that is in a pretty good year. It is just not there to come out.

Mr. Thatcher: Is that figure from the Bureau of Statistics, that 2.9 per cent?

The WITNESS: No, it is not, This is a figure for 1946, and, if you remember, 1946 was an awfully good year. The net profit before tax was 6.77 per cent, and after tax, 2.68 per cent.

Hon. Mr. Garson: On capital, sales, or what?

The WITNESS: On sales.

By Mr. Fulton:

- Q. Thank you, Mr. Harris. Then on the basis of your experience would you be prepared to give this committee reasons why you think that the MacQuarrie Committee erred in their methods and where it was they failed to make a complete or adequate study?—A. Since they were closed hearings, I could not.
- Q. I am sorry. I should have asked you whether you appeared and gave evidence before the committee yourself?—A. No, sir.
- Q. Did anyone appear on behalf of your association?—A. Our association appeared.
 - Q. Did anyone who is here appear?—A. No.
- Q. So the answer you made to my earlier question is that your opinion is based on your reading of their report and you are not in a position to discuss the methods they followed in arriving at their conclusions. Is that right?—A. No, I am not. I think that we can only gather it. We do not know what the discussions were amongst themselves. We can only see what the conclusions were and we can make our observations upon the conclusions which they have reached.

By Mr. Shaw:

- Q. Might I ask Mr. Fulton if he would ask this question: was your organization invited to appear before the MacQuarrie committee?—A. Yes.
- Q. But you yourself did not appear?—A. Yes. We did appear, but I personally did not appear.

By Mr. Fulton:

Q. You yourself did not personally appear, but your organization appeared and gave evidence; and none of the gentlemen who are here with you this morning appeared. I think you said that?—A. Yes. But Mr. McKee did.

Q. I wonder then if Mr. McKee would be prepared to make any comments on the methods followed by the MacQuarrie Commission in line with the questions I have just been asking, Mr. Harris?

Mr. McKee: I am not prepared to make any comment, because when coming here today I did not expect to have to show opposition to the methods of the MacQuarrie Commission. Is that not right?

The WITNESS: That is correct.

Hon. Mr. GARSON: Do you not know why you are opposed to the Mac-Quarrie Commission's report, Mr. McKee?

Mr. McKee: Yes, I think so.

Hon. Mr. GARSON: It might be of interest then for the committee to learn your reasons.

By Mr. Fulton:

Q. The situation is that when this brief was prepared in advance, it was not prepared to show or to discuss the methods followed by the MacQuarrie Commission in arriving at its conclusions. Is that not a correct summary?—A. That is correct, sir, and might I add this: I have stated that if I might have an opportunity of making suggestions, I would make this one very strongly. The question has been asked: what proportion of items are price maintained? Now, I cannot give a satisfactory answer to that question, and I do not know of anyone who can. I would suggest, however, that the Dominion Bureau of Statistics might be able to advise you on the number of price maintained items that go into the cost of living index. That may be one approach towards your getting the more definite information which one of your members suggested. It may be that it is well worth your while to have the Dominion Bureau of Statistics make a survey to find that out.

My second suggestion which I shall repeat is that you review the profit and loss statements of a representative group of retailers. We would be very glad to make those available, to enable you to gain some knowledge of what margins you have got in there that you can equalize out of prices.

Q. Would you or any of your members desire to have an opportunity to come back before this committee at a later date to present to us, let us say, a critical analysis of the methods followed by the MacQuarrie Commission, or to criticize the policy of the report based on that approach?—A. I cannot answer for my organization in that respect without first consulting the board of directors.

The CHAIRMAN: Now, Mr. Dickey.

Mr. Dickey: I am not quite clear on what is meant by this invitation to discuss the methods of the MacQuarrie Commission. As I understand it, this committee is sitting in order to give the gentlemen present as witnesses an opportunity to place before us their views on the findings of the MacQuarrie Commission, and the reasons, and the facts, and the arguments that they wish to place before us to show that the conclusions of the MacQuarrie Commission are wrong.

So I do not think it is fair to place these gentlemen, or any other people who come before this committee, in the position of being requested to give an opinion either favourable or unfavourable as to the methods followed by the MacQuarrie Commission, as long as it is thoroughly understood by the present witnesses and by the witnesses who are to come, and the witnesses who have already been here that this is an opportunity for them to place before us their full case against the recommendations. That I think is the kernel and the purpose of this investigation, and I do not believe we should ask them to criticize the methods of the MacQuarrie Commission because I do not think that is relevant.

The Charman: I quite agree with you, Mr. Dickey, on this matter and I think that Mr. McKee was quite right in choosing not to comment on it. The submissions were made in confidence and I think it would be just as improper for the committee to comment on the manner in which witnesses have been giving evidence as on the manner in which the MacQuarrie Commission received its evidence. Moreover, I suggest that this particular group has already done so, because from pages 3 on in their brief they give us their views on the findings of the MacQuarrie Commission and that is the point we are now discussing. From page 3 on they start off each of their paragraphs with a statement from the MacQuarrie Commission report and a statement of whether, in their view, it is right or wrong.

By Mr. Fulton:

Q. The answers so far have indicated that these witnesses cannot go any further but the reason for the line of questions is this: Mr. Dickey has said that what we want from these witnesses is the reason why they think the conclusions reached by the MacQuarrie Commission are wrong. I quite agree, but I think one of the basic reasons put forward by many of the witnesses and many of the organizations appearing before us, that they are wrong is because the whole field is so complex; and certainly, if many of them feel that the MacQuarrie Commission did not make the adequate inquiry that they should have made, then they will feel that the conclusions reached are wrong. I shall not follow that any further this morning. But you have stated in answer to Mr. Phelan that there were some members of your organization who did not agree with the position you have taken in your brief. Do those members who do not agree with your position fall into any group or any category of retailers?—A. No. They constitute both large and small retailers. I do not know them by name.

Q. Are they a particular type of retailer, such as a department store, or just retailers?—A. No, they are just quite free-wheeling retailers.

Hon. Mr. Beaubien (co-chairman): Are they numerous?

The WITNESS: No, they are not numerous.

The CHAIRMAN: Order, please.

By Mr. Fulton:

- Q. Are there any statistics available, or have you any statistics from which we could find the percentage of volume of the total trade in Canada which is sold subject to price maintenance?—A. No sir. The only suggestion I can make is that the Dominion Bureau of Statistics might make a study of it. Every store differs in its proportion and every department of that store will differ in its proportion. There may be a statistical method of discovering it, but I am not sufficiently well informed to say.
- Q. Are you in a position to give us your best judgment as the relative importance to cost of living, or to the cost of living index or to that which enters into the cost of living as we know it, of these classes of goods which are subject to price maintenance? Are they a type of goods upon which the cost of living index is based, or are they, in your judgment, just an average cross-section, or have they a relatively low importance in relation to the cost of living and the cost of living index?—A. I must plead ignorance as to the factors which go into the cost of living index but as to the price maintained items generally, let me say this: that they represent the best value that people can get, taking it over a period of time, or they would not come back and buy them again and again. They are important items in the store. Why do we like price maintained items? First of all, because they are best-sellers. You always like your best-sellers. And why are they best-sellers? Because of the device

of price maintenance, if you like, or because of the type of manufacturer who realizes the protection which is afforded to the public under price maintenance. And over a course of time, an acceptance is built up for a product which has been brought into use by the consumer.

Q. One other question and I am through. I ask you to picture in your mind an average family, and to think of the buying of that average family. It is not living in luxury; it is just an ordinary middle class family, a kind of "folksy" people. I ask you to think of the buying of that family in a year. Would it constitute a large or small percentage? What percentage of goods which are subject to price maintenance which would be purchased by that family?—A. The only guide I can give you, sir,—and I am relying entirely on memory—perhaps Mr. McKee can help me on that—but I think something like 5.7 per cent or 6 per cent of purchases from department stores are of that type of goods. Now I cannot answer with respect to the food division at all. But the others are things which go on your backs and into your homes.

Hon. Mr. Beaubien (Co-chairman): You say 6 per cent are price maintained?

The WITNESS: No, 6 per cent are purchased.

By Mr. Fulton:

- Q. Perhaps your answer really is that there are not sufficient statistics available for you to form an opinion; but in your opinion—you are a retailer and representing retailers, and you would know that manufacturers groups are also in favour of price maintenance—you are speaking of it as a retailer who is maintaining prices which are indicated to him by the manufacturer.—A. That is correct.
- Q. Who benefits more from price maintenance, the manufacturer or the retailer?—A. I would say the consumer, really.
- Q. I quite appreciate that that is your position, or the justification of your position. But, as between the manufacturer and the retailer, who benefits more?

 —A. You mean, who benefits most?
- Q. Yes.—A. That is a tough one. But speaking for the retailer, as far as the retailer is concerned, on price maintenance items he would like to get more of a margin than he does.
- Q. I did not mean simply from the point of view of profit; but you have indicated the advantages of what you call orderly marketing, particularly from that type of benefit. I do not mean profit-wise alone, but by that type of benefit, who gains more, the manufacturer or the retailer?—A. I think it benefits both of them.
 - Q. You would make no distinction?—A. I would make no distinction, no. The CHAIRMAN: Now, Mr. Jutras.

By Mr. Jutras:

Q. I suppose it is natural in connection with this practice of price maintenance that for the most part you work on averages. For instance, I take it that you have a margin of profit in the case of the retailer, an average margin of profit; and I suppose it would follow that that margin of profit would be based, I mean the average margin of profit would be based on the average efficiency of the retailer, so that naturally the effect would be that in some cases in your trade, just as in any other trade, there are some who are efficient, some who are less efficient, and some who are more efficient. So, speaking of the average profit in the case of the very efficient retailer, there would be a much larger profit as far as he is concerned, than there would be with respect to the others?—A. Yes, that is conceivable; and I think that the same retailer,

if he is a small one, and I would presume that he is because he is efficient, would pass on those savings to his customer in all the products that he sells.

The CHAIRMAN: How?

By Mr. Jutras:

- Q. That leads me to the other point: if he has a greater margin of profit than he really requires on account of being more efficient, naturally his desire would be to pass it on to the consumer; but under the price maintenance practice, how can he pass it on to the consumer?—A. Very easily indeed, on the items which are not price maintained. He is going to give the people that benefit.
- Q. Yes. But take it as of today. Suppose the practice of price maintenance tends to become more generalized as the tendency is today?—A. Then I have no doubt that the margin of profit will narrow because in a highly competitive trade such as the retail trade, everyone is just watching for an opportunity to see that his prices are right, and that he is not higher than anyone else.
- Q. And under this practice you are bound to operate on an average?—A. That is true.
- Q. And if it is bound to be an average, there are the two extremes and the middle of the average, no matter what happens.—A. In my very limited experience, I can think of two fields wherein the margin of price maintenance items has narrowed very greatly. I go back to 1929 or 1930 in the radio field when I can trust only to my memory. Perhaps Mr. McKee would be able to verify it—when we were operating on a mark-up from 40 to 45 per cent.

The CHAIRMAN: Mark-up on cost or on selling price?

The WITNESS: On selling price. But that has now narrowed down to where with television we have a margin of 29 per cent; and on radio it would run, I take it, to 31 per cent or 32 per cent at the present time. And that margin has become narrowed and is continuing to narrow over the course of time.

By Mr. Jutras:

- Q. What would be the percentage of price maintained goods in your organization?—A. I do not know.
- Q. You say that the tendency would be in that case to cut the margin; but then, if you do that, do you not destroy the very purpose for which this practice is set up, that of helping the small businessman? Because, if you do cut your margin down, it will make it impossible for the small individual dealer to operate, and it will definitely encourage the big chain stores.—A. Can you tell me who operates more efficiently, the smaller retailer or the big one? I do not know. I think there are efficient small retailers and efficient big ones.
- Q. I ask you: if the margin of profit is reduced much lower, would that not in your opinion tend to encourage the chain stores?—A. I do not think I can categorically answer you. I would not answer that question. I think you must first speak of a particular trade, of a particular type of distribution.

The CHAIRMAN: Mr. Beaudry is next.

By Mr. Beaudry:

Q. Just following up this question of Mr. Jutras', would it not be true or possible that the added volume of sales obtained through the better acceptance of a price-maintained product, if it is better accepted, would compensate for the loss provocated by the smaller margin?—A. Yes, that is very true, Mr. Beaudry. One of the chief advantages of a price-maintained item is that it is branded. There is normally a strong public acceptance for that item, and what

the retailer is interested in is not his initial margin but what he finishes up with after mark-downs. For instance, if in the ready-to-wear field, where branding is extensive, mark-downs are high—the style factor is the main one there—but on the good sound stable price-maintained articles you take very few mark-downs on them, you might take a two per cent mark-down, but where an unbranded proposition is involved you might take 10 per cent mark-downs on them and you need a good margin to overcome that.

Q. So, in effect, a greater turnover through acceptance of goods which are price maintained might far exceed a loss or a diminishing of margin to

the retailer?—A. That is true.

Q. Mr. Harris, how many individuals are members of your association, including those members of groups who belong to your association?—A. We estimate that through our affiliates we represent something between 40,000 and 50,000 retailers.

Q. Would you also care to estimate how many people. By that I include, naturally, the employees of these various individuals who are represented by

your federation.—A. You are talking individuals or bodies?

Q. I am still talking in figures of individual people, employees.—A. I am

afraid I could not guess.

- Q. Could you hazard an estimate?—A. The only figure I can give is that there are some 700,000 people in the distributive trades in Canada and there are some 160,000, I believe, outlets, and we are representing a proportion of these today.
 - Q. Would you care to hazard the proportion.

By Mr. Fulton:

Q. Do you mean 160,000 retail outlets or distributive outlets?—A. Distributive outlets. I would just be guessing, and I prefer not to guess, but I would say we are representing today the majority of them.

By Mr. Beaudry:

Q. May I suggest a figure in the light of the figures you already quoted. When you and your group, as a witness, come before this committee to implement the suggestion made by the minister and the chairman that you try and lay before this committee views which would tend to bring the committee to reconsider the conclusions of the MacQuarrie Committee, that you, in effect, are speaking for a body of, shall we say, 500,000 people who are directly affected by the question we are now discussing, or is the figure of 500,000 too high?—A. I would not be able to say, but I would say this, that we are discussing a problem that very directly affects 700,000 people, and I would like to point out that one is very apt to talk about the consumer as a person apart from the retailer, but there are some 5,200,000 people employed in Canada, of whom 700,000 are in the distributive trade, and each of those has three or more dependents, and there you have a very substantial part of the population of Canada who are directly connected with the distributive trades and who are consumers. They are not a group set apart.

By Mr. Fulton:

Q. You speak about the distributive trades, and you are representing the Canadian Retail Federation. I do not quite understand what you mean by that term. Would you clear up my difficulty for me.—A. The Dominion Bureau of Statistics, to the best of my knowledge, does not break down the figures so you can define the difference between a retailer and a wholesaler.

Q. When you speak of the distributive trades just now, do you use it in the sense of retailers or somebody who distributes goods amongst retailers?—A. I am speaking only on behalf of retailers.

By Mr. Beaudry:

- Q. May we take your brief point by point, Mr. Harris. We will begin by statement 1 on page 1, "resale price maintenance is a stabilizing factor in our economy. It is the most effective method of curtailing the anti-social effects of loss-leader selling." Mr. Dickey brought out, in a very pertinent question following your statement, verbal or written, that price maintained goods only constitute a minority or small part of the total goods in retail trade today, and that would logically tend to make the committee believe, I would think, that in the overall structure of the retail trade, since this represents a minority factor, and perhaps a very small minority factor, you gentlemen are stressing, or overstressing, the importance of the question of price maintenance. Would it be possible to find from you, and I think Mr. Dickey tried to get it, perhaps, without satisfactory result to him and at least to me, this: Is it possible to break down that minority into groups in such a way that we might establish in some cases that what is to the whole trade a minority is to one group of retailers a majority group of goods.—A. I would agree with you, Mr. Beaudry, and if I may go back to my former suggestion that the Dominion Bureau of Statistics might very well make a survey to that effect.
- Q. So, in other words, while this is a minority, or a question affecting a minority of products in some industries, it may be a question which deals with, let us say, the very life of the industry, or if you wanted to carry it that far, of a certain group of industries?—A. Let me take the illustration of one man who sells only potatoes and an other man who sells electrical appliances. There would be a very wide disparity between price maintenance as between the two retailers.
- Q. You did make the statement that it is a stabilizing factor in our economy, and you gave instances as to why it was, but again comes a question to our minds of how can it be so important a factor with business, which knows and enjoys its current success—at least I think we can accept that—and which places so much importance on the stabilizing factor in what is but a very small group of goods. Consider also the assertion that in your experience and in the experience of your members, about how price maintained goods sell. I am wondering in my own mind whether you did say that price maintained goods generally sold lower than goods on which prices are not maintained, or whether you said that the margin of profit to the retailer was smaller?—A. The margin of profit.
- Q. Other witnesses have told us that price maintained goods sell for lower prices than other goods, and I believe so, Mr. Chairman; but could I assume from that and from your answer that price maintained goods offered a stability to the whole trade from the manufacturer to the retailer level, which permits in turn the retailer to work on a smaller margin of profit, and gives the manufacturer a sense of stability and a regularity of production which is not obtained within other groups which are not price maintained. May I infer that from your answers?—A. That is a very embarrassing question because we always tell the manufacturers that they do not give us enough margin.
- Q. Yes, I appreciate that. But I now suggest to you—and I think it is a very important point—you say, or rather your contention with respect to the MacQuarrie report, as based on the arguments presented, is that price maintenance is something which operate greatly to the detriment of the public because it tends to lessen competition. I think everyone will agree with you that that seems to be a major consideration of the MacQuarrie report.—A. Well!

Q. I am not asking you a question on that. You will pardon me. On the one hand, from your answers, we draw the conclusion that the manufacturer who deals in price maintained goods gives the retailer less of a margin, because, on the other hand, he gives the retailer an assurance of stability in prices.

Mr. THATCHER: What is the question, Mr. Chairman?

By Mr. Beaudry:

Q. I am coming to the question in a moment, Mr. Thatcher. Would it not also follow in the light of your earlier answers that, in relation to the category of goods which are not price maintained there are of necessity—again from your earlier answers—that of necessity there enters into it an element of risk both from the retailer and the manufacturers' angle which would largely and normally tend to create the necessity of a larger margin to perhaps both the manufacturer and the retailer in the eventual sale of those goods?—A. That is my opinion!

Q. Would you be able to give us the reasons, or your views, as to why in the

main prices are not maintained?—A. Why prices are not maintained?

Q. I say, in the main, because you said that maintained prices were a minority group.—A. I can give you several reasons. The major one is: moving slow-moving merchandises, merchandise which the public has not found acceptable at the price at which it was offered to them. And I think you would find that the majority of stores consider that mark-downs are one of the major problems in their operation. Therefore prices are reduced in order to get rid of merchandise so that capital can be freed to purchase more acceptable merchandise for customers.

I put that as the principal reason for price reduction. And I would suggest as another reason for price reduction: the factor of creation of traffic which is important with some types of retailers but not with others.

Q. Are there any other reasons which occur to you?—A. Yes, I can think of the most common one of all, that is: someone comes in and says that he can get it cheaper down the street.

The CHAIRMAN: I wonder if I might make a suggestion.

The WITNESS: That may or may not be true; but someone may come in and say that; and the merchant will say: "I cannot let the other fellow beat me." So he brings down his price.

The CHAIRMAN: You expressed a doubt as to whether you should mention trade names before this committee. I think we are interested in having actual examples. Therefore, could you not take one group which is known, and another group which is not so well known and give us examples with respect to them?

The WITNESS: I do not think it is fair for me to mention a product; but I will mention a classification.

The CHAIRMAN: Suppose you take Proctor and Gamble's soap.

The WITNESS: I am not qualified to discuss that.

Hon. Mr. Beaubien (co-chairman): May I ask one question, Mr. Beaudry? Mr. Beaudry: Yes.

By Hon. Mr. Beaubien (co-chairman):

Q. Do I understand from the answers you have given to Mr. Beaudry that the principle behind price maintenance is to give cheaper goods, goods at a lower price, to the consumer?—A. Or better goods at the same price.

Q. No. The principle behind price maintenance as it is carried on today is that the consumer will get cheaper goods. Is that the principle behind price maintenance?—A. Yes. Each person is striving. Each manufacturer and each maker is striving to give a better product at a more acceptable price. My

opinion would be that price maintenance enables a steady program of that kind to be carried on, something which an unstable and up and down scalping type of marking would not permit.

Q. Do I understand you to say that the retailer, through the price maintenance system, is able to sell price maintained goods at a lower margin

than other goods which are not price maintained?—A. That is true.

The CHAIRMAN: Gentlemen, I have a list of 7 other members who wish to ask questions of the witness. I think it is likely that the House will adjourn fairly early this afternoon. I am sure it would be a convenience to you gentlemen if your questioning could be finished today. So would the committee like to meet again at 3:30 this afternoon?

Mr. Beaudry: Mr. Chairman, on the day that we opened our sittings we took up the question and I think it was decided that the committee would sit every day at 10:30 in the morning with the exception of Wednesday, when we would sit at 3:30 in the afternoon. Therefore, relying on that decision I made an appointment to be in Montreal today at 3:30. I am very distressed but what can I do about it? I cannot be here this afternoon, and I cannot be here for reasons which I think will be taken as valid ones by the committee. I would certainly would like to pursue by questioning of Mr. Harris and his associates. I have always been co-operative with you.

The CHAIRMAN: I think that all points of view are fairly well represented on this committee and in view of the fact that we would like to get along with the discussion, I think it would be almost inconceivable that the wishes of one single member of the committee should prevail.

Mr. Thatcher: Well, Mr. Chairman, I must add my objection to that of Mr. Beaudry, I do not see why we should be pursuing these things as fast as we are. I have not done any questioning yet and I have a good half hour of questioning to do.

Mr. HEES: Let me suggest that we go on this afternoon, Mr. Chairman.

The CHAIRMAN: I shall put it to the committee.

Mr. Beaudry: On a point of order, Mr. Chairman, before you put it to a vote, let me say that I appreciate the fact that there is no appeal from your decision on a point of order; but I would repeat that it was decided that we should sit every day at a definite time. Therefore I submit, in view of the fact that we were put under such stringent operations of sitting daily, that we should be allowed some time to meet commitments of such a nature as the one I have indicated. Personally I have not missed a single session of this committee to date and I do not intend to do so. But two weeks ago I felt that I could rely on the decision made by this committee with respect to its time of sitting. I submit that it makes it extremely difficult for me to try to reconcile that fact with your position now with respect to this afternoon's sitting.

Mr. THATCHER: Mr. Chairman, I do not think you can officially call a committee meeting without first giving a certain notice.

The CHAIRMAN: I have made no decision at all. I put it to the committee whether or not, we shall go on as a convenience with these gentlemen, since they are here, and since the major part of the questioning has already been done, and since Mr. Beaudry has attended every meeting and has certainly taken his time as far as questioning is concerned.

Mr. Fulton: That is not appropriate, Mr. Chairman.

Mr. Beaudry: If I may say so, there is no reason why I should not take my time about it.

Mr. MacInnis: I am quite willing to sit this afternoon but, on a point of order, I believe that the committees are governed by the house rules, and

so I do not think we could sit this afternoon unless we had the unanimous consent of the committee.

The CHAIRMAN: In that case our next meeting will be Monday. The clerk of committee advises me the point is not well taken.

Mr. Stuart: I think these gentlemen have come a long way to give evidence here, and I think if we sat for an hour this afternoon we could let them go.

The CHAIRMAN: All in favour of extending this sitting, which convened at 10.30 this morning, being adjourned now and meeting at 3.30 this afternoon so we can continue the questioning of these gentlemen? Those opposed?

We will meet at 3.30.

The committee adjourned.

AFTERNOON SESSION

-Committee resumed at 3.30 p.m.

The CHAIRMAN: Gentlemen, order. The first point that Mr. Beaudry has asked me to raise is the point about which he spoke this morning. During adjournment I saw the Clerk of the House of Commons in connection with this point of order on which the clerk of our committee remarked this morning that the point was not well taken, as to whether the committee has a right to hold an adjourned meeting in the afternoon. The Clerk has drawn to my attention that committees have repeatedly done this, meeting in the morning, adjourning to the afternoon and, in some instances, adjourning to the evening. The hope of this committee is to get the work done as expeditiously as possible, and also to give some consideration to our witnesses with whom we may be able to finish this afternoon with this sitting.

Mr. Beaudry, will you please continue your questioning.

By Mr. Beaudry:

Q. I refer to your article 1 on page 1 of your brief, wherein you state that "resale price maintenance is the most effective method of curtailing the anti-social effects of loss-leader selling." This morning I understand that you gave three possible definitions, or definitions as given by three different groups of thinking people, definitions of a loss-leader. Could I conclude from that that a loss-leader is something that is hard to determine or establish?—A. That is correct.

Q. It has been suggested here, I think, by witnesses that there would be no objection to price maintenance abolition if the loss-leader practice were also legislated against. Am I fair to the committee in making that statement?

I am suggesting this now, the Commissioner of Combines has stated that vertical integration is difficult to prove under the present statute. Now, if we did have legislation covering the abolition of price maintenance and also eliminating loss-leaders, I would like to know from you, with your experience and the collective experience of your association, if you think that it would be easy to define loss-leadership and to eventually prove the practice of loss-leadership.—A. In my opinion it would be extremely difficult. I think I am correct in saying that despite the fact that it has been on the statute books for 15 years or more, there is yet to be an action employing section 498-a.

Q. Then, your answer implies that something that is not a loss-leader in at least one of the definitions that has been given of a loss-leader, which is that of an article sold below cost to the retailer, that a loss-leader which would not be a loss-leader in keeping with that definition but which would be on

fringe of that definition, which would just go over the limit imposed by the actual cost, would be for the purpose of anyone who would like to use that loss-leadership as a tool, as an instrument, would be just as effective as actual loss-leadership.—A. Yes, it is a matter of degree. If one were determining upon a loss-leader, so-called loss-leader, you would need to know what is the state of public acceptance of the product at that particular time, is it a very active market or a very dull one, and the price must be varied accordingly to achieve your objective of bringing in the traffic.

Q. Could I say when we are discussing loss-leadership, that is a word that is important now, it is mentioned in many of the briefs as such, and it is the contention of both pros and cons that you cannot determine all offences classified as loss-leadership, that it would be just about as difficult as the determination of an offence against speed regulations, motor vehicle regulations, under which you would be definitely committing an offence if you went over 50 miles an hour, but you might be guilty of a greater offence if you went at 49 miles an hour instead of 50.

Hon. Mr. Garson: On a point of order, Mr. Chairman, I wonder if the witness is an expert on the Combines Act. If he is not he could not answer that question. It is a question of whether you can enforce it.

Mr. Beaudry: I stand corrected, Mr. Minister.

Mr. Macinnis: On a point of order, Mr. Chairman. Mr. Beaudry has for the last two days been making a series of statements that superficially appear as questions. In one instance today he made one of those statements in the form of a question to the witness and then he said to the witness "I do not want an answer." In reading the record, these statements appear as if they were questions and that they were assented to by the witnesses. I do not think we should have that.

Mr. Beaudry: On your point of order, Mr. MacInnis. I do not think it is fair to a witness to let him answer on a question which relates to statements made by another witness and repeated correctly, when I do repeat correctly; it is a matter of record with which the witness is not familiar. That is why I do not expect an answer from him. It serves as a basis on which to ask succeeding questions.

Mr. Macinnis: Is it, then, that certain questions are to be asked of the witness and he is not supposed to answer them, and certain other questions he is supposed to answer. Who is to decide the questions he has to answer, and otherwise?

Mr. BEAUDRY: I will pay attention to your remarks, Mr. MacInnis.

The CHAIRMAN: The witness is well qualified to answer without too much preliminary explanation of the question, Mr. Beaudry.

By Mr. Beaudry:

- Q. I will deal now with page 2, article 3—"minimum resale prices also tend to become maximum prices." Would the converse be true?—A. That maximum prices tend to become minimum prices? I think that is without meaning, is it not?
- Q. I am talking about set maximum prices.—A. I am not familiar in all cases of set maximum prices.
- Q. The question is brought up to you by this, that there has been a suggestion in some of the briefs that people who are opposed to resale price maintenance would not be opposed, however, to this feature of resale price maintenance which would allow the manufacturer to indicate a maximum price only.—A. I go back to the point which I made this morning. I think that there is some objection to price maintenance because, in the opinion of some buyers, they are

not allowed a sufficiently great margin. They would like to see a wider margin which in operation would mean a higher price. I think that would answer your question indirectly.

Q. In that case the buyers' objection to resale price maintenance would be that it acts contrary to what he believes to be his interest, but for the public interest—A. But for the public interest. And the case of maximum prices—

- Q. Mr. Harris, I am going to be rude, I hope but not too frequently. I have to leave early and I will try to restrict my questions and perhaps you could restrict your answers. Is it not true that resale price maintenance has at times the effect, or may have had at times the effect of effectively policing prices in times of scarcity in certain lines?—A. That may be true. I am not personally familiar with any instances, though.
- Q. Well, we work on the assumption that resale price maintenance is only enforceable by a manufacturer through his using sanctions against the parties who deviate from the list of prices he has indicated, whether maximum or minimum, and we must take for granted that these sanctions are exercised. We must take for granted that they have been exercised in two directions. Are you familiar with the effect on the retailer when he went beyond the price fixed?—A. I can definitely answer yes to that. I have personal knowledge of it.
- Q. If that is true would that not be an action from the manufacturer passed on to the retailer assuring the consumer's benefit?—A. Yes.

Q. Thank you. Part 5 on page 2 states:

"A survey of retailers' margins for price-maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products." I assume that margins in various products are different.—A. That is correct.

- Q. Would you care to explain the elements which are taken into consideration when a merchandiser or a manufacturer sets his margin on a product.—A. Yes, I would be glad to. These are the factors, the chief factors. First, the risk involved, and may I point out as an example the ready-to-wear field in dresses, where the risk of your choice of styles not being acceptable, or styles changing quickly, is quite different from the electrical appliance field where, because of the investment involved in equipment, dies, tooling and so on, the planning period is so much longer. That is No. 1, the greater risk. No. 2 is the cost of selling. In some departments it is simply a counter operation, practically self-service. In other departments it takes a great deal of personal attention. Another factor is service. Does a product require service after it has been sold? Another factor which is purely a matter of store policy is how free one is in the policy of exchange and refunds. Those, I would say, are the main.
- Q. Would you explain what is usually understood in the trade by shelf life, the shelf life of perishable goods and the shelf life of unperishable goods?—A. Well, the object of any retailer is to achieve the fastest rate of turnover that he can. If he has \$100 invested in merchandise and if he can turn that over 10 times a year then it is obvious he is going to make a profit on \$1,000 of volume. If he turns it over once a year he will make a profit on \$100 worth of business. Therefore, the shorter the shelf life of an article the more profit, other things being equal.
- Q. There also follows from this, I would think, that the longer the shelf life or the longer the storage, the heavier the cost to the retailer and the smaller the profit, and a higher margin to obtain the same profit must prevail?—A. That is true.
- Q. You represent a group of retailers interested in extremely wide and varied lines of goods. Could you tell the committee the spread between what we might term the normal standard margins with or without specifying the category of products, and that in which there is the widest margin?—A. Without too great accuracy, I believe that in the case of cigarettes the margin is about 10

per cent of selling. In the case of an item such as costume jewellery it would traditionally be in the neighborhood of 45 per cent.

Mr. HARKNESS: These are all on selling prices?

The WITNESS: Yes, all based on selling price.

By Mr. Beaudry:

Q. So these margins are based in part on the rapidity of turnover and the rapidity of profits on investment?—A. Yes, on the factors you have mentioned, Mr. Beaudry.

Q. And in one case or two with no element of risk whatsoever, in the

case of cigarettes . . . —A.Well, shall we say a minimum of risk.

Mr. Fulton: Mr. Beaudry, would you like to explain what you mean by risk?

Mr. Beaudry: We established this morning that price-maintained goods—this has to take the form of a statement, I think you will permit it, Mr. MacInnis.

Mr. MacInnis: I will watch you carefully.

Mr. Beaudry: In the case of price-maintained goods, since the retailer knows in advance the quality of the goods he is going to receive, the price at which he shall purchase and the price at which he shall re-sell competitively at any given time, within a fair period of time, the element of risk as to price and possible loss is practically eliminated, whereas, in the case of a non-maintained price, the retailer who has to stock or order six or seven or eight months in advance of the actual date of sale has no guarantee as to the actual resale price at that time. That creates an element of risk which must be paid for in the form of a premium by the consumer?

Mr. Fulton: Thank you.

Mr. MacInnis: A very neat statement.

Mr. Beaudry: I think it was factual, Mr. MacInnis.

Mr. MacInnis: The witness did not answer it though.

Mr. Beaudry: One of the main interests of this committee in price maintenance and its effect is a statement fairly widely circulated, at least by some groups of people in this country—many groups perhaps—that it tends to eliminate competition and therefore is detrimental in consequence, and by the application of elimination of competition, it affects the public interest.

Mr. Shaw: Mr. Beaudry, on what do you base that statement? You said it was the opinion of this committee?

Mr. Beaudry: No, no. I think I can refer you to every brief we have before us.

Mr. Shaw: You did not specify that it was contained in the briefs. You left the impression that members of the committee were of that opinion.

Mr. Beaudry: Well, we can refer to the record and see.

The CHAIRMAN: We do not have the record read back. You can repeat your statement, however.

By Mr. Beaudry:

Q. I say that one of the main questions which preoccupies this committee, in regard to the question of price maintenance, is that it is advanced by some in this country, or by many in this country, that price maintenance as currently practised eliminates competition; and that this makes it one of the many reasons why it is a detriment to the public interest? I would like to ask this question: what are the sanctions, to your knowledge, which would be applied against a violator of price maintenance, on goods which were price maintained—

sanctions which would be applied by the manufacturer? What form may that take?—A. It may take the form of first requesting that his price be restored to the price maintained price. It may take the form of the manufacturer buying up whatever stock that he may have. It may take the form of the manufacturer finding himself unable to supply in future.

Q. Is not that a slight understatement—the last part of your answer? That the manufacturer might find himself in the position of not being able to supply further goods?—A. I would not know whether it is an understatement

or an overstatement, but it is a statement of fact.

Q. Well, I am not suggesting anything to you but would it not be truer to say that the manufacturer might very clearly say that unless the dealer sells at the price which he had set there would be no more goods available to the dealer?—A. I have never had any personal experience of it being stated just that bluntly.

Q. I appreciate that, but let us not quibble too much. Those are the sanctions, and the last one is very severe—whether it has been obtained in very polite terms or just in actual practice. I would think it is very severe against the offender and I would say that in his case it certainly eliminates him from competition with other retailers—as far as that particular brand of goods is

concerned.

Would you tell me if these same sanctions are not at times applied for other reasons than that of price cutting or going over a price maximum. Perhaps I should make myself clearer. Has it ever been known in the trade that a manufacturer or his agent, the jobber, would refuse to sell a retailer because his shop offends the laws of cleanliness?—A. That would be possible.

Q. Do you think it has happened?—A. I cannot answer that. I am not too familiar with the food trade. I have no knowledge.

Q. You have no knowledge?—A. No.

Q. Is it possible that a manufacturer might apply all these three sanctions we mentioned earlier against someone—a retailer—whose credit does not satisfy him. I refer to good grounds, and I am not using the term "credit" as an excuse for other loopholes?—A. I would say then the ground is purely one of credit.

Q. Has it come to your attention at any time in your business life that a manufacturer might exercise some sanctions against a retailer whom he

considers to be a poor merchandiser?—A. Yes, sir.

Q. Do you know whether those instances are many?—A. I am afraid I cannot answer for all the manufacturers but it would seem to me that a manufacturer has the responsibility of finding proper distribution for his product. If he finds the distribution inadequate through one outlet he must of necessity seek another.

Q. Is it not a fact, Mr. Harris—well, I will reword the question. Is not distribution one of the main preoccupations of the manufacturer?—A. Yes, sir.

Q. And if that is so—and you have said yes—as far as the retail trade is concerned is he not far less a dictator than a seeker of goodwill?—A. I would agree with that.

Q. But he seeks his goodwill in competition with others, does he not?-

A. That is true.

Q. And every manufacturer is in the same position?—A. I would say, broadly yes.

Q. Broadly, yes. In your experience do maintained prices differ considerably as between substantially similar articles?—A. Not very much variation. Competition levels them out.

Q. Not much variation?—A. No.

- Q. Competition levels them out. To your knowledge do margins to retailers vary considerably in substantially similar articles—A. A very narrow variation.
 - Q. Mr. Chairman, I would like to ask for some advice if I may?

The CHAIRMAN: Who are you going to ask advice from?

Mr. Beaudry: From you or from the joint chairman?

Hon. Mr. GARSON: Will you guarantee to take it?

Mr. Beaudry: I will. May I refer to a brief submitted yesterday?

The CHAIRMAN: I do not know why you cannot. It is a matter of record in our proceedings but I hope you will identify the brief for the witness.

By Mr. Beaudry:

- Q. This is the brief submitted by the Canadian Pharmaceutical Association to which is appended a list of resale prices, sizes, discounts, amounts, percentages, and profits. Unfortunately I left my notes in my office, but from a perusal of this I discover that eight types of shaving cream described as relatively similar sizes, showed a variation as to sale price of somewhere between 34 cents and 73 cents, if my memory is correct; and that the variations between margins of profit or mark-ups to the retailer in these eight products varied between 20 and 33. Is that not a slight contradiction of your statement made a moment ago?—A. I would have to know the characteristics of the product. I might add this: the less desirable the product the more the manufacturer will endeavour to woo the retailer by allowing him a wider margin.
- Q. Would you allow the committee to conclude that competition in price margins does exist to a great extent between manufacturers competing for the same article?—A. Yes.
- Q. Thank you. Do you have members selling goods on which the price is maintained by provincial authorities—such as, for instance, in dairies?—A. Yes.
- Q. Can you give us a reason why the price is maintained by legislation in those cases? I am speaking now of provincial legislation. If you are not familiar with the motives you have no answer but if you can suggest some we would like to have them.

The CHAIRMAN: Surely that question should be asked of the people who are in charge, the legislative body. These gentlemen are only aware of the effects of the legislation.

By Mr. Beaudry:

Q. I will withdraw the question, but I will leave it that you do have members selling that type of goods?—A. Selling food products.

Q. I am going to take only three more minutes Mr. Chairman and I am cough.

through.

Returning to Article I on page 8—that price maintenance stabilizes and likely lowers prices by eliminating an element of risk to both the manufacturer and the retailer—an element which, as insurance, is covered frequently by a premium—in this case price increase?—A. I do not understand your question.

Q. I will repeat it, and the only answer I would like, please, is yes, or no.

Mr. Fulton: That depends on the question, does it not?

The CHAIRMAN: The witness has a right to answer any way he wishes—yes, no, and anything else.

Mr. Beaudry: I would not prevent him but that is what I would like—and I do not necessarily get what I like, Mr. Chairman.

By Mr. Beaudry:

Q. Is it true, in your opinion, that price maintenance stabilizes and likely lowers prices by removing an element of risk and uncertainty to both the manufacturer and the retailer—in this case price?—A. Yes.

Mr. THATCHER: What is your proof?

Mr. BEAUDRY: The record to date—

The CHAIRMAN: When it is your turn to question you may ask that, Mr. Thatcher.

Mr. THATCHER: Thank pou, Mr. Chairman. I hope that time will come.

The CHAIRMAN: I hope so too.

By Mr. Beaudry:

- Q. On point 2 is it true that while on the whole of the country's manufacturing business price maintained goods represent a small part, a minority of the total trade, it may constitute in some industries a major part, and the abolition of prices maintenance might have serious repercussions on the consumers and those industries?—A. Emphatically so.
- Q. Point 3. Minimum resale prices also tend to become maximum prices. Is it or is it not true that maintained resale prices are in effect a maximum price and at time set effective controls on would-be profiteering?

 A. They tend to become maximum prices.

Q. Point number 5—

Mr. THATCHER: Can these statements be amplified? Just to say yes or no does not put any evidence in front of the committee. I would like to see some evidence on the point.

The CHAIRMAN: I think it is important, despite the fact that you have to catch a train, that the witness answer the questions fully.

Mr. Beaudry: Actually, Mr. Sinclair, I think he has already answered them in other forms I am only summing up.

By Mr. Beaudry:

Q. You were suggesting this morning that these gentlemen put up a concrete case and I am only trying to sum up each one of their own answers. That is why I am taking up each point separately.

Is it true that the retailers' margins of profit are generally smaller in price maintained goods because of easier, faster, more frequent selling without the element of risk as to price or excessive stock?—A. Yes.

The CHAIRMAN: Surely we have had these questions all this morning. I do not think you are in the position of counsel summing up at the end of a case, Mr. Beaudry. In deference to the other members of the committee they have points on which they would like to talk and they have been very reasonable in taking their turn.

Mr. BEAUDRY: That is my last question.

The CHAIRMAN: Before Mr. MacInnis starts I think that in fairness I should read a telegram I have just received.

"The Hon. Senator A. L. Beaubien, Mr. James Sinclair MP Joint Chairmen—Joint Committee of the Senate and the House of Commons on Combines Legislation, Parliament Buildings, Ottawa.

Brief presented to you today by the Canadian Retail Federation was not presented to all the members of the executive committee of the

federation before its submission. Having now seen the brief we would like to point out that it does not represent the views of all the members, many of whom are strongly opposed to price maintenance.

(sgd) M. A. Robinson,

The T. Eaton Co. Ltd. Representative on the executive and Board of Directors Canadian Retail Federation."

The committee will remember this morning that this witness did point out that he was not presenting a brief on which the members were unanimous.

Hon. Mr. GARSON: Just a moment, I think it is desirable in the interests of the witness as well as ourselves that we should be clear. Did I understand him to say it had met with approval of all members of the executive? This telegram apparently points out differently?

The WITNESS: I do not think I said it had the approval of all members.

Hon. Mr. GARSON: That is what I understood you to say but anyway the record will indicate it.

The WITNESS: If I said that I was in error.

The CHAIRMAN: Mr. MacInnis?

By Mr. MacInnis:

Q. I am afraid there will be a little overlapping but I am only going to ask a few questions. Stop me if I go too far because I do not want to ask unnecessary questions.

The first point you make in your brief—and you say it is a brief summary of the views expressed at that time to Justice MacQuarrie and his fellow committee members:

"Resale price maintenance is a stabilizing factor in our economy. It is the most effective method of curtailing the anti-social effect of 'loss leader' selling."

- A. It is one of the purposes. May I say something about the case of a product which many years ago was probably the most popular product in its classification on the market. They did not enforce price maintenance policy and that product today has virtually—I would not say "lost" its distribution—it still has an element of distribution, but it is called an under-the-counter item—otherwise it is produced only if people ask for it; but, through being used as what we call a football, it has ceased to have any profit attraction to the retailer whatsoever and consequently, in the course of time the public have lost their interest in it. In other words, public demand for it has died down.
- Q. As the public demand disappears for this particular article you mentioned the article will partially disappear. Retailers will not sell it, display it, or put it in a place where buyers will see and ask for it.—A. Partially so.
- Q. Well, what are the reasons, if that is but a partial reason?—A. Well, times change and demands change with them.
- Q. That might happen to any article, whether price maintained or not; it might go out of fashion.—A. It might.
- Q. And it does not necessarily mean that this particular item went out of fashion just because it was not price maintained?—A. It does in this particular illustration which I have in mind.
- Q. You are sure that it does? Is there very much in the way of loss-leader sales at the present time? Is it a common practice?—A. I have to think that one over very carefully; and again, it depends upon the field and the store and the definition of a loss-leader. I am told by one of my associates that the United States Commerce Department has been trying for six years to define the term "loss-leader", but they have yet to find a definition. So I feel very humble in relation to that experience.

- Q. Well, the Congress of the United States should be able to get their definition by consulting the people who have appeared before us because all of them included it as a most important item in their briefs, a most important function. Therefore if Congress gets into difficulty, we should be able to help them out. You did not answer that question, but would you not say that loss-leader selling is an important item in merchandising at the present time?—A. It is important to some types of stores.
- Q. To which stores?—A. May I give you an illustration. If you go along Sherbrooke Street in Montreal you will find the stores there have found that loss-leaders were not a device which was of very great use to them. Their appeal is more to fashion and to exclusiveness and so on. On the other hand, if you seek in the lower end of the city, you will find that the loss-leader principle is more important there to produce traffic.
- Q. I agree. If there is a bargain, people will seek out that bargain but I cannot agree with you, an expert, on the point you made this morning that if a brand-named goods were sold at a loss, sales would fall. Is it not the practice of manufacturers to sell goods cheaper in order to get people acquainted with their products?—A. Would you mind repeating your question.
- Q. Is it not a fact that manufacturers do at times sell their goods at a lower price in order to get their goods introduced into the market and to get people acquainted with the product; and once they have appreciated its value, then they will sell those goods at the normal price?—A. Yes.
- Q. That is true. So, if merchandising in that way would increase the sale of a product, how would it decrease the sale of a product if it were sold, for instance, under what you call the loss-leader practice?—A. Well, again let us take an illustration of a product. I think that is the simplest way for one to speak of it; and let us say that that product has a regular selling price or maintained selling price of \$4. Then, one store decides to make a loss-leader of it and sells it for \$2. Therefore there is a discrepancy of \$2 between the maintained price and the selling price. That means that the sale of that product stops, not entirely, but slows down very considerably in every store which fails to meet that price. If they all should meet it, then it ceases to hold the same attraction; and they must get it up again because they cannot continue to operate at that level. They must find some other product which is going to give them more returns in order to equalize their mark-up, which keeps them in business.
- Q. I agree that sales would fall in the stores which did not lower their prices. But I believe that the total sales to the manufacturer would not necessarily decline.—A. We are talking about the retailer now, not the manufacturer.
- Q. Yes, but the manufacturer has to supply the retailer; and if one retailer sells more, let us say, of shirts than another, surely the sales of the manufacturer do not decline, do they?—A. In my opinion, over the course of time, they would very definitely decline because that product has ceased to prove acceptable to the retailers generally.
- Q. Let me put it this way: supposing you were in the habit of buying a certain brand of shirt which you liked, and for which you had been paying—I have not bought a shirt for such a long time I do not remember what I would pay for one.—A. Let me say that they have gone up.
- Q. Well, let us say \$7 or \$8, or let me be modest and take a price that I can afford, \$5; and then if you could get that shirt from some other store for \$2.50, you would buy two or three of them because you could get them at that price. Now, that \$2.50 shirt will give you just the same service as the \$5 one; so would you discontinue buying that shirt because the price came down to \$2.50? Would you think that it had deteriorated in value?—A. No, I do not think I would. But I think I might find it very difficult to locate a place to buy it at that lower price.

Q. I cannot follow that.—A. May I amplify my answer? The Chairman: Surely.

By Mr. MacInnis:

Q. If that is the answer, we can leave it at that.—A. I would like to make my point clear. Let us take an example of a city in which a shirt manufacturer has eight outlets, all good reputable dealers. One of them decides to cut prices on that shirt. He decides that he is going to make that shirt his loss-leader in order to bring people into his store, and he is prepared to accept a loss on that particular item because he is going to make it up on others. Now, the other three stores are going to stop carrying that shirt, and when they stop carrying it, the first store is going to have it exclusively, if you like. But the manufacturer is not going to be content with that form of distribution because he is not going to get the volume out of the one account that he would get out of the four accounts; and if he does not get his volume, then his cost is necessarily going to rise. Therefore the product becomes less acceptable to the consumer in other places on that account.

The CHAIRMAN: Now Mr. Stuart.

By Mr. Stuart:

- Q. Every once in a while there will be an advertisement appearing in an Ottawa paper concerning some store here in Ottawa, offering to sell 3,000 shirts, let us say, at a discount of so much. Trade names will not be mentioned. It will be sugested in their ad: "We are unable to mention trade names." How could that come about if it is not too much bother for you to answer it? I have often wondered why it was done.—A. I cannot answer for the Ottawa stores but I can answer for our own store. You say: "How could it come about?" First of all, it might be soiled merchandise; secondly, it could be slow-moving lines; thirdly, it could be old merchandise, older than you are prepared to accept in your stock; fourthly, it could be purchased from a manufacturer at a special price; and fifthly, it could be distress merchandise, over-produced merchandise.
- Q. That would be merchandise, I take it, when it is advertised in that way, on which a price had been set by the manufacturer; that is why it would be advertised in that way?—A. By not using the manufacturer's name?
 - Q. That is right.—A. Yes, that would be so.

The CHAIRMAN: Now, Mr. MacInnis, again if you please.

By Mr. MacInnis:

- Q. According to point 2 of your brief, you say that resale price maintenance applies to only a minority of products sold at retail. Is the practice increasing of the factory setting a price to be maintained?—A. I find that question a very difficult one to answer accurately because of lack of knowledge and because of never having studied the question. But let me say this: although we have made that statement, again I would like to emphasize that in some categories of merchandise and in some types of goods and stores, I think you will discover it is a very large proportion of their sales.
- Q. You cannot tell me whether the practice is increasing, whether there are more price maintained lines today than there were five years ago?—A. I could not answer that, but I could if you said fifty years ago or even if you said twenty years ago.
- Q. I am thinking, let us say, of 1941, ten years ago.—A. No. All lines were price maintained in 1941 by the government.

- Q. But that was at the end of November or December, 1941, and that is not the kind of price maintenance that we are talking about.—A. All I meant to say was that price maintenance was not a factor during the war years.
- Q. That was price maintenance imposed by an authority responsible to the people of Canada. But this is price maintenance imposed by people who are not responsible to anyone but themselves.

Mr. Fulton: It was pretty effective pressure.

By Mr. MacInnis:

Q. I think that in nearly all the briefs we received there was a sentence in them to the effect that resale price maintenance applied to only a minority of products sold at retail. Is that an apology for price maintenance? Is it something which is just used to make price maintenance more acceptable?—A. It was an attempt to bring out the fact that, taking in all categories of retail, there was but a relatively small proportion of the over-all sales items which were price maintained; but that in particular classifications there was a great deal. Now, as you know, ready-to-wear represents a very large part of purchases. There is comparatively little price maintenance in the ready-to-wear field, because the appeal of the item is that of fashion, eye-appeal, whims, if you like, of the purchaser. It has a very short "making" period. It has a very short life in the store, and perhaps it has a very short life on the back of the person who wears it.

Now, that all goes in to average it out. I would like to give an illustration of an automobile. An automobile manufacturer has to plan his new model 12 months in advance. I am guessing on this. He has to tool up far in advance and put his product on the market. He has to be assured of a certain market before he can set his price. He has to set his price before he goes to the market to take his orders; and by and large he must maintain that price throughout the season. It is a long-range commitment, whereas with the dress manufacturer, it is what is known as a cutting up trade. You order today and it is delivered in two days from now.

Q. On page 2 of your brief under point No. 5, you said that shrinking margins were more of a source of concern to the retailers. You said:

A survey of retailers' margins for price maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products. Indeed, more concern was expressed by retailers over shrinking margins which manufacturers allow because of the competitive efforts of the supplier to obtain a larger share of the market by keeping his price at a realistic level.

Have you or your organization ever taken this matter up with the manufacturers? I refer to the matter of shrinking margins?—A. No, sir. We are not a trading organization.

Q. The individual retailer would take it up with the manufacturer?—A. That is entirely up to him. I am speaking of the Canadian Retail Federation, when I say that.

By Hon. Mr. Garson:

- Q. Would any of your component associations do so?—A. They might, conceivably.
- Q. Yes, I think so. But would you find out about it and let us know?—A. Yes. I think that probably some of them will be submitting briefs themselves, and that point might come out, sir.

By Mr. MacInnis:

Q. With respect to the point of orderly marketing you say resale price maintenance encourages it possibly because there is assurance not only of stable quality and current prices, but also the knowledge that there will be no need to shop in more than one retail outlet. That means that price maintenance reduces competition?—A. No, sir. I do not think the statement says that.

- Q. No. But if the price at each retail outlet is the same, and that is what this appears to be, you said there would be no need to search for fractional advantages in price by shopping in more than one retail outlet, because there would be no advantage to be found. Is that right? Is that a fair interpretation of this item?—A. No, sir, I do not think it is. Again I might use an illustration: I recall to you the day when every grocer had his barrel of oatmeal, and the only difference between the barrels was in the number of weevils in them. The competition was purely equivalent to price; it was an identical product and one fellow could under-sell the other fellow. Today you get a cereal which is based upon taste, upon presentation, and upon the liking of the individual. The lady who buys it does not have to go shopping up and down the street to find out who has weevils in his oatmeal and who has not. She is sure that when she buys oatmeal there are no weevils in it, and that it is a very acceptable product. She can have that assurance.
- Q. Your brief did not make any mention of weevils. Therefore I left them out of my interpretation. But I think in reply to a question asked by Mr. Jutras you said that there was a higher margin on non-price maintained than on price maintained goods.—A. That is your question?

Q. Yes, did you say that?—A. Did I say that?

Q. Yes.—A. Yes, I made that statement.

Q. Well, are the non-price maintained goods then carrying the retailers' profits that should go fairly to the price maintained goods?—A. I would say that the profit, if any, is being borne by both. But how much each contributes to that profit I do not know. You would have to make a pretty complete analysis of a department to get an accurate answer to that question.

Q. Do you consider it would be a good thing if all goods were price

maintained goods?-A. No, I would not.

- Q. Why not? If it is good for a certain number of articles, why should it not be good for all articles? You said this morning, I think, that it protects the consumer. So why not go the whole hog and say that it protects the consumer by putting price maintenance on all goods?—A. Because with respect to some products it is impossible to establish a standard.
- Q. You do not want to establish a standard in these articles. You merely establish a brand name. That is not a standard.—A. A brand name is associated with a standard. Perhaps I may make that a little clearer. Let us say apples are very much more difficult to establish a standard on than it is in the case of sugar.
 - Q. I see you are not familiar with British Columbia apples.

Mr. Fulton: I think the Tree Fruits people say they laid down a fairly successful classification of standards. They have a rigorous inspection system to enforce it, also.

Mr. MacInnis: Did you ever buy a box of extra fancy delicious packed in the Okanagan? I am asking the witness. He does not have to answer.

The WITNESS: No, we patronize our local products pretty well.

By Mr. MacInnis:

- Q. Well, then, your answer is this, that you would not like to see all goods price maintained?—A. That is right.
- Q. It would be putting too much of a limit on competition. Would that be the reason?—A. No, sir, simply the ability to identify and maintain the standards

that the consumer and the retailer could rely upon. For instance, nails, if you like, a bulky product of that kind is very much more difficult for the consumer to identify than it is in the case of a shirt, to come back to that again. Let me go back to my illustration of the dress. It is much more difficult for a standard to be established in a dress than it is in a shirt.

Q. Well, that may be so, but it is still easier to apply standards to nails than it is to a shirt or a dress. I sometimes go shopping with my wife and she has a hard time getting something she like, but I can go in to a store and ask for two pounds of $2\frac{1}{2}$ -inch wire nails and I know exactly what I am going to get.

What I want to do is to get an answer why is a small amount of price maintenance a good thing, and not a complete price maintenance?—A. Again, I can only repeat, that for some products which I attempted to say this morning, where use is one standard, use and wear, use and operation, where that can be established and tested over a long period of time, then it is a valuable device both to the consumer, the retailer and the manufacturer. In other fields it is not so applicable. In a free competitive system that level is found out, discovered, it finds itself.

Q. Just one other question. On page 4 you say:

Manufacturers who offer suggested resale prices do not do so without excellent knowledge of the market.

What is the meaning of the word "suggested" there?—A. It is a practice of some manufacturers to give a suggested retail price.

- Q. Is it just a suggested retail price?—A. I think that is a very mild way of putting it.
- Q. I do not want a mild way; I want the actual term that is used.—A. That is the usual trade term, "suggested price".
- Q. Does suggestion here mean that this is the price at which you will sell?—A. Yes.
 - Q. That word "suggestion" I have not understood before now.

By Mr. Hees:

- Q. Mr. Harris, you said this morning, and again a few moments ago, that in your opinion the profit margins on articles which are not price maintained are generally greater than the profit margins on articles which are price maintained.—A. That is my experience.
- Q. Well, now, if you can back up that opinion by figures, then I believe you will have sold the practice of resale price maintenance to the Canadian people generally, and I say that for this reason, that the buying public expects the retailer to make a reasonable profit on the goods he sells just as the farmer and the industrial worker expect a reasonable profit on the goods they sell. I believe if it can be demonstrated to the satisfaction of the people that the profit margins on price maintained goods are reasonable and generally less than the profit margins on goods which are not price maintained, then the buying public can have no practical objection to the principle of resale price maintenance. Mr. Harris, if given time, could you and your associates produce figures to demonstrate this?-A. I would say yes. I speak without complete authority, but I feel fairly well convinced that the executive of the Canadian Retail Federation would go along with that. We shall endeavour to secure from our members comparable figures to find out the breakdown in the sales, possibly by choosing two departments where price maintenance is a strong factor in that department, which I would think would be the best test, and I think I can say, if it is a practicable thing to find them out and if we may have the sanctity, if you like, of the names of the companies, preserved. I mean we are very competitive and we do not trade figures in the retail. If they can be known as companies

A, B and C, and that is preserved, then I feel fairly confident that our members will co-operate to give these figures. May I go a little further? In my opinion that is getting very much to the root of the thing. In the MacQuarrie Commitee, as far as we were concerned, we were not asked for any factual evidence and I would suspect that their conclusions were reached without factual evidence of this kind as far as maintained prices are concerned.

Q. Mr. Harris, how long would you think it might take to obtain these figures?—A. I would have to consult to find out. We could let you know at

the first of the week.

Mr. Thatcher: Would you permit an interjection, Mr. Hees? Mr. Chairman, I believe Mr. Hees has put the finger on the main point, and in the briefs we ask for from now on I think that that point should be made, that when these industries come here to give evidence that they bring with them tangible prices. I think it would help.

Mr. Hees: Mr. Chairman, I believe that this is the crux of the whole thing. We are here to try and decide whether resale price maintenance is or is not in the best interests of the Canadian people, and it is only by figures of that kind that it can be demonstrated to the Canadian people whether this is or is not in their interest, and I think that all other talk on the subject is completely outside the point. It is the figures that count. Either resale price maintenance takes the Canadian people for a ride, which they have been led to believe it does, or it does not, and resale price maintenance gives the people a better break than on goods which are not price maintained. If that is the case there is no objection to resale price maintenance. I suggest that Mr. Harris and his associates obtain those figures as soon as possible and return before this committee, because only in that way can we decide that very important point.

The Chairman: I agree that it would be of value, but we must be sure of what we are getting. The fact that the mark-up on a price-maintained article is 25 per cent and on an article of equal quality not price maintained, the mark-up is 40 per cent does not mean that that the consumer will get it at a lower price. I would think when we have these figures on that basis we should have certainly, I think, brand names because I think they are pretty important here. If they are to be known as articles A, B, C and D, we will want to know what the goods are because we will want to know the quality, and I would suggest that we ask this gentleman who wired us today, who is on the other side of the retail trade, to provide us with similar figures.

Mr. HEES: We are all for that. It is important not to spend days and weeks just talking over generalities like we have been, but to get the people here, like the gentleman who sent that telegram, and ask them for specific figures. I do not think any amount of oratory is going to prove this one way or the other. It is the flat figures that will prove it. The people of Canada, members of parliament, and, I think, the members of this committee have no idea just what the practice of resale price maintenance is. I think this is the only way you can show people what it is and what it does.

Mr. Fulton: May I make a suggestion to Mr. Harris to try his best to get these figures from reputable firms, whether large or small, who will be willing to have their names and the names of the brands revealed. I make that suggestion for this purpose: As I said this morning, the committee should get facts and figures; the committee has power to subpoena witnesses and to compel them to produce their records. We prefer not to have to do that, but it may be done to get the actual information we need. We would have to do that unless somebody is going to volunteer, and that is why I made the suggestion to try to get this evidence from members who would not object to having their names and the names of the goods disclosed.

Hon. Mr. Lambert: I think Mr. Harris said he could get that information for us early in the week.

The WITNESS: No, I said we could let you know early in the week whether we could supply it.

Hon. Mr. GARSON: I am in entire agreement with Mr. Hees that this comparison is the crux of the question, but I think in practice it may be found a much more difficult feat than perhaps some here have been inclined to think. In the first place, we have to be absolutely certain that the commodities which are compared, that is the one being under resale price maintenance and the other not under resale price maintenance, are as nearly identical as possible. We have to make a comparison of comparable things. The economic conditions will have to be the same because the economic conditions will affect price. I think perhaps that you will find when you come to make the inquiry that one of the best places to get such a comparison is where you have—and I do not know whether we have that condition in Canada—the same articles being sold in two different jurisdictions close enough to have their economic conditions roughly comparable, in the one case under resale price maintenance and in the other case with no resale price maintenance. Now, attempts at this sort of thing have been conducted on a fairly large scale in the United States and they have had great difficulty finding it out there. We would have, I think, even more difficulty here; because I think I am right in saying that it will be quite difficult to find two places in Canada that are comparable, in one of which resale price maintenance applies in the other of which at the same time resale price maintenance does not apply. Do you know of any, Mr. Harris?—A. Well, sir, the point as it appears to me would be this, that if in a department your average mark-up was $37\frac{1}{2}$ per cent on goods which are not subject to resale price maintenance, and 35 per cent on goods that are subject to resale price maintenance, then the point would be made.

Hon. Mr. Garson: That is just the kind of simple solution that, I think, might lead us far astray. The real point of the matter is, as I think, and the chairman has stated, not a question so much of mark-ups. I do not think the consumer cares what happens to the mark-up as long as he gets value. The real test is whether the consumer gets a certain product under resale price maintenance for, we will say, a dollar, and the same product not under resale price maintenance at 90 cents in the one case, or \$1.10 in the other. I do not think he is concerned with the mark-up.

Mr. Fulton: Let us get prices, then, as well as mark-ups.

Hon. Mr. Garson: Yes. I think the opponents of resale price maintenance argue that under the competition that they say will prevail in the absence of resale price maintenance there will be a tendency for prices to come down. The supporters of resale price maintenance say that by the stabilization and the economy which that permits the manufacturer and the distributor to effect, you can sell the goods for less. Now, I share Mr. Hees' views very emphatically, that listening to all these generalities, statements and so forth carries no conviction, to my mind. If the witness says in answer to a long question by Mr. Beaudry "Yes, they are cheaper", that answer carries no conviction in my mind. But can you produce evidence that where the same products sell, under conditions which are otherwise fairly comparable, at less under resale price maintenance than they are under no resale price maintenance...that is the question.

Mr. HEES: Less, or the same, or no more expensive.

Hon. Mr. Garson: Or no more expensive.

Mr. HEES: One or the other.

96281-43

The WITNESS: Mr. Chairman, the contention has been that the retailer is making more money on price-maintained items than he is making on non-price-maintained items. That is inferred in the MacQuarrie report.

Mr. HEES: That is what the public understands.

Hon. Mr. Garson: I think I can say this, that this committee is not interested in pushing the retailer down or cutting his profit, but it would like to have a system under which the consumer could get as good a deal as possible and consistent with that the retailer could make as good a profit as possible. The figures that we have been able to get in the department—I think I should say this in all fairness to the witness—tend to indicate that where this comparison can be made the comparisons are all in favour of no resale price maintenance. Not only did the consumers get a better deal, but the retailers, dealers, are also better off. Unless a comparison of that kind is made then comparisons in mark-ups will not establish very much.

Mr. Hees: Is not the important thing, then, that Mr. Harris and his associates, representing a very large number of retailers, are here to prove a case for resale price maintenance? They believe it is a good thing. Let us not be taking away a lot of their worries in proving their case for them. My suggestion is that they prepare a case on a different basis than has been presented so far, with facts and figures, and come back and state it to us, and that we give them the opportunity to do so. He has welcomed the opportunity of so doing. Let them now bother about the details, let them bother whether they can convince us. It is not our worry.

Hon. Mr. Garson: I agree, but I say it will be of considerable help to Mr. Harris if we can give him some specifications on what it is that we want. I say we are not mostly interested in mark-ups because the argument that the opponents of resale price maintenance, as I understand it, is that when you do away with these restrictive practices of any kind, you create that degree of competition at the manufacturing level, at the distributive level and so on, and you get your prices down and increase your consumption and the amount of business done, so you have an efficient economy and everybody at every level is better off. If we are going to have from this witness any figures here that will be worth very much to this committee—I am just expressing my own opinion—I think they should be in the form of a list of products that he can demonstrate have been sold under conditions otherwise comparable to the consumer for a lower price under resale price maintenance—and if you like at a lesser mark-up, although I think that is of less importance than the price to the consumer.

By Hon. Mr. Lambert:

Q. I just want to logically follow up what you are saying about what you might do. Your organization is made up of provincial units, and, being a federal body, you will have to consider them. Could they give you say ten lines in which you have price maintenance, and even on ten lines, answer the point that members of your retail association deals in—to prove or at least to support the claim that price maintenance does not increase prices.

It seems to me that on the basis that the retail association, through the individual retailer according to the statistics you have given us, represents practically 73 per cent of all the business done in Canada, that it is a very representative basis on which to make a statement. The chain stores and the departmental stores represent something like 17 per cent and 10 per cent of the volume. Surely 73 per cent of the business done in this country can be classified into evidence sufficient to represent what the majority of this field covers. That is purely a suggestion.—A. Perhaps I should make that clear. We

represent all of these groups, not just some. The Canadian Retail Federation is representative of departmental stores, chain stores, and the independent retailers.

Q. Oh, I see you include them?—A. Oh, yes.

Q. Departmental and chain stores?—A. Yes, in our membership.

Mr. Thatcher: Mr. Chairman, as a retailer I must take exception to what the minister has just said because I think it would be very pertinent to this committee if we went out and found that a store was selling 1,000 articles and of that number 900 were being sold under non-price maintenance at a mark-up of 35 per cent, and that the 100 being sold under price maintenance were marked up only 25 per cent. I would think that would indicate very clearly in that line of business that the practice of resale price maintenance does not necessarily mean higher prices. The contrary in fact would be true.

The CHAIRMAN: Yes, so do I.

Mr. Thatcher: I think it is very necessary to get a general picture on price maintenance goods as compared with those which are non-price maintenance goods. Far from being a difficult task I think I can tell the minister that it will be a very simple task to go out and follow such a procedure.

The CHAIRMAN: May I just speak a moment to the committee. We are again branching out on two lines of thought. The point Mr. Thatcher raises is a very important point as far as mark-up is concerned. However, we have two ladies here this afternoon and I do not think they care what the mark-up is to the retailer. They want to cut down the cost of living by getting goods cheaper when they go shopping. I understood that was the purpose of this committee—to see whether this practice of resale price maintenance was increasing the cost of living.

Mr. Fulton: But you said exactly the opposite this morning. You said this committee was to examine into and consider the report of the MacQuarrie committee.

The CHAIRMAN: That is right.

Mr. Fulton: The minister told us that this morning and now you are advancing another argument to prevent us from getting the figures we want. It is just the opposite.

The CHAIRMAN: Order, Mr. Fulton. Mr. Fulton: It is just the opposite.

The CHAIRMAN: I am not opposing the suggestion about figures. We all want figures, but we want figures which will convey something to the Canadian people.

Mr. THATCHER: They certainly would tell us something.

The CHAIRMAN: We have concentrated on the retailer and forgotten that it is the manufacturer who sets prices and he is not setting those prices through any philanthropy, but it is his initial price set after his own financial calculations. It may be that Mr. Hees' figures would be very useful to show that in the case of manufacturers the resale price is higher under price maintenance, and that he could give a smaller percentage of mark-up which would net the retailer more money and mean a lower final price to the consumer.

I think you have made an excellent suggestion and that we should have the manufacturers produce the mark-up prices to the retailers on articles of comparable value. I suggest that we should get that not only from the witness here, who, to give all credit due him, has shown us on what side he is; but we should also get it from somebody from the retail field who disagrees with him violently. I think it is a field in which figures in abundance can be produced, and we know that in any field where there is an abundance of figures there is ample opportunity to buttress any argument. Once we have both figures we will be in a better position to go ahead.

Is that agreed?

Mr. HEES: It is 100 per cent as far as I am concerned.

Hon. Mr. Garson: Can I deal with this subject very briefly before we finish. I agree with both Mr. Hees and Mr. Thatcher that no harm can come from securing these comparative mark-ups, but I do suggest that the retailers' mark-up, as a component of the final price that the consumer has to pay, is just one factor, and that what the consumer is interested in are all factors.

The CHAIRMAN: Hear, hear.

Hon. Mr. Garson: It just so happens that in the brief presented by the Pharmaceutical Association yesterday a comparison was made of figures in the United States, because Professor Fuller who helped to present it said that he found it very difficult to get statistics of this sort in this country. I am sure this witness would agree. At page 21 of the supplementary brief they state: "A comparison of 117 branded articles showed that 35 cost about one-third less in Washington, D.C., which has no fair trade law, than in Maryland, where resale price maintenance is legal; 38 cost about one-quarter less, and 29 cost one-seventh less."

Then the second item:

"54 trade drug items cost an average of 16.2 per cent more on the east bank of the Mississippi, where fair trade is legal, than on the St. Louis side, where it is not."

Now that is the kind of comparison, I suggest, that really compares, that is of the price to the consumer. If the consumer can get his merchandise at a favourable price I do not think there is a single member of this committee who is going to inquire too much as to whether the retailer might perhaps have a higher mark-up—where the consumer is getting this sort of a deal.

Our purpose here is not to depress the retail trade or the wholesale trade or the manufacturer; it is to arrive at a system of merchandising and manufacturing that will give the consumer the best possible deal and at the same time maintain the manufacturer, the wholesaler and the retailer as prosperously as we know how.

Mr. Hees: Mr. Garson, what the government is proposing to do is to legislate against a practice which has not yet been proved harmful to the general buying public. We have had Mr. Harris' statement today and Mr. Preston's statement yesterday—and Mr. Harris is going to back his up with figures as far as the retailer is concerned—and their opinion is they take a lower mark-up. If you want to go further and say mark-ups do not mean a thing in the retail trade because the manufacturer might be taking too big a cut, then the only other person we have got to get is the manufacturer. As Mr. Fulton suggested this morning let us have a proper inquiry and get the facts before we pass legislation which is going to have tremendous effect on the great body of merchandising in this country. Let us find if it is or is not a bad thing. You, as the government, are suggesting that we pass legislation but we do not know whether it is a bad thing we are passing. That is the guts of the whole thing.

Hon. Mr. Garson: I agree with everything you have said but my simple suggestion is that mark-up alone, by itself, would not necessarily be conclusive. I think you agree.

Mr. Hees: Yes, I do. However, as Mr. Fulton suggested this morning, let us really make this an inquiry and get the manufacturers. If you think the retailers are getting smaller mark-ups on price maintained goods but the manufacturer is taking a big cut, then let us get him in. There are only two

cuts, one by the manufacturer and one by the retailer. If they are both smaller on price maintained goods then the government's legislation is ridiculous.

The CHAIRMAN: There are three cuts in some cases.

Mr. Hees: My suggestion is let us get them in too. Let us prove this thing. Hon. Mr. Garson: You do not have to go very far. One of the first things a witness could bring along to prove it is evidence that these comparisons in the United States which I have quoted are not valid.

Mr. HEES: I do not think the United States has any bearing on this at all.

The CHAIRMAN: Order, Mr. MacInnis is next.

Mr. MacInnis: I understand, Mr. Chairman, that the Royal Commission on Prices made a very thorough investigation and comparison of all maintained prices—at least in some lines.

Mr. THATCHER: Well did they?

Mr. Macinnis: Just a moment. I understand they did, and whether they did or not can be easily ascertained. There is no reason why we should go to still more expense to get information we have already on hand. That is the first information we should have—and I believe they made that investigation.

Mr. Fulton: Which royal commission do you mean?

Mr. MacInnis: The Curtis Commission.

Mr. THATCHER: Has there been an answer to Mr. MacInnis's question: Did the committee make such an investigation?

The CHAIRMAN: The committee reported on resale price maintenance in their report.

Mr. THATCHER: Did they go into figures?

The CHAIRMAN: I will find that out and report on Monday.

Mr. Dickey: My observation is, as I understand, the minister was reading from one of the briefs submitted to us already, so that information is before us.

The CHAIRMAN: We will return to this brief on Thursday.

Mr. Fulton: I think the information asked for, both from the retailers and the manufacturers and from the jobbers, is what the committee should be concerned with, and if we cannot get it voluntarily we should subpoen them and get it for ourselves. It appears now there is no objection to it forthcoming. If they can produce it willingly and readily and come back and tell us on what basis it was produced, so we can satisfy ourselves that it is fair and accurate information and a valid comparison on the point Mr. Garson raises, then I think if they can get that comparatively quickly we should have it for ourselves, whether or not the other Royal Commission on Prices have had it or not. That will not add to our expense or impose any great deal of work.

There is one other question, whether this association can also give figures to enable either us or the Dominion Bureau of Statistics to make a study as to what extent the resale price maintenance practice on the goods to which it applies enters into the figures in the cost-of-living index.—A. I doubt if we could, but I am quite sure that the Dominion Bureau of Statistics would have no trouble, and we would be very glad to work with them on it. If they will indicate the items which they take in as factors, then we will indicate what we take in as price maintained items.

Hon. Mr. Garson: Later on a combines investigation economist will come before us with an estimate of the percentage of merchandise which is covered by resale price maintenance; and in that connection we have been trying to check the accuracy of this estimate as closely as we can. I wonder if the witness, who is the head of a department store, can tell us what percentage of merchandise his store sells which would be under that category?

The WITNESS: Which would be price maintained?

Hon. Mr. GARSON: Yes.

The WITNESS: I have no idea, sir.

Hon. Mr. Garson: We can only make an estimate.

The WITNESS: It has never been a factor with us, so why should we know? It is a free economy.

Mr. Fulton: I understand that your organization or some expert from it would be willing to sit down with the Dominion Bureau of Statistics and tell them which goods came into the cost of living index which are price maintained, and therefore arrive at a basis of how much price maintenance affects the cost of living; or more accurately, the percentage that the cost of living index derives from price maintained goods.

Hon. Mr. GARSON: I think it would be very helpful if they would sit in with our experts, and, if you like, criticize or advise on the validity of the methods by which we have made this estimate. We would show you how we arrived at it and you could say: we do not think that this or that item is right.

The WITNESS: If that could be possible.

The CHAIRMAN: We shall write to Mr. Robinson and inform him and ask him if he is opposed to the practice. Now Mr. Shaw?

By Mr. Shaw:

Q. Mr. Chairman, returning to the brief I should like to ask Mr. Harris if he was one of the architects of this brief. In other words, did he work on this compilation.—A. I did not, sir.

Q. Did any one of your associates who are present have anything to do with the drafting of this brief?—A. No sir.

Q. I am coming back to this reference to loss-leaders on page 1. You have made a very specific statement there. You say:

"It is the most effective method of curtailing the anti-social effects of 'loss-leader' selling."

You have been extremely hesitant today about defining loss-leader, yet you have used it in a very specific sense here and you have asserted that it is anti-social. Now, how can you reconcile that statement with the fact that you have already said that as far as you are concerned it is almost impossible of definition? How can you reconcile those two facts?—A. I think I have admitted that today by means of an illustration, and I have pointed out a case, if you will remember, in reply to Mr. MacInnis about the shirt which was cut in price from \$4 to \$2, and the effect upon the community and upon distribution in that case.

Q. As far as your definition of loss-leader is concerned, would it be fair to say that you are much in the position of the man who is faced with a night-mare, that it is almost impossible to define, but it frightens hell out of you?—A. It has a different meaning to different people I think I tried to make that plain.

Q. Well, this is your brief. What did loss-leader mean to your association when they used it in this brief?—A. If you note, we put it in quotation marks.

Q. Which, of course, does not mean a great deal. You did not put in a foot note at the bottom saying: we do not know the meaning of this and we are not satisfied that we know the meaning of it. Anyway, exactly what do you mean when you say it is anti-social? Do you mean in relation to the manufacturer, in relation to the wholesaler, in relation to the jobber, to the retailer, the consumer or the public? Does it work to a disadvantage with respect to all those groups?—A. Well, yes.

- Q. You indicated this morning that the druggists are affiliated with your organization. Did your not include them?—A. Yes.
 - Q. You did include them?—A. The Ontario Retail Druggists' Association.
- Q. Do you believe that the removal of resale price maintenance would cause the almost immediate and widespread practice in the use of the loss-leader?—A. I believe it would.
- Q. You believe it would? But in an earlier answer you seemed to indicate that you did not feel that way. However, I accept your answer now. You think it would be almost immediate in its effect?—A. I think so.
- Q. Then you agree with the Canadian Pharmaceutical Association in their assertion that there would more than likely be an immediate effect?—A. I have not read their brief.
- Q. They asserted that in their opinion there would.—A. If they asserted that, then I agree with them.
- Q. And do you agree with them in their assertion that it would create a chaotic condition? Would you go so far as to use the word "chaotic"?—A. Those are very strong words, and they lend themselves to different interpretations. But it would certainly create a very disturbed condition within the trade.
- Q. Even though a retail store might find that only a very small percentage of its actual sales are made up of price maintained goods, you think it would have that effect on their business?—A. You are now asking about the drug trade?
- Q. No, I am asking about any business.—A. I am sorry I misunderstood you. I thought you were referring to the brief which was presented yesterday afternoon.
- Q. No. I am referring to the general retail trade.—A. That would vary according to the classification of trade.
- Q. In any event, you have asserted, I believe, what average percentage of a general retail business would be met by price maintained goods. Did you not give an average?—A. I did not give an answer to that.
- Q. But you have said that the Canadian Retail Federation is made up of certain affiliated associations which you listed, and you asserted, I believe, that they stood as one with you in opposition to the proposed government legislation?—A. No.

The CHAIRMAN: No, no!

By Mr. Shaw:

- Q. Do you recall any group associated with you as being in entire opposition?—A. I do not, sir.
- Q. What percentage of retailers would you say stand with you in the position which you take in opposition to the proposed legislation?—A. The great majority.
- Q. The great majority. Now, how did you come to that conclusion? By what process?—A. I came to that conclusion from the advice of our associates and from a survey of our own direct members.
 - Q. You have made a survey since the 9th of October?—A. Yes.
- Q. Have you, or your associates written to each retailer to ascertain his views?—A. Across Canada?
 - Q. Yes.-A. No, we have not.
- Q. Have your affiliated associations done that?—A. We cannot say that they have canvassed their entire membership.
- Q. Then how have you determined that you, as a retailer, could say that the great majority are with you? How have you determined their views?—A. We assumed that the trade associations, if they are representative of their trades, are familiar with the thinking of their particular memberships and are

qualified to answer for them. If they are not, then they do not belong, I mean

they should not act as representatives of their groups.

Q. Is it not very difficult for you to assert categorically that the great majority of retailers stand with you in support of your opposition to the proposed legislation? You cannot actually make the assertion that the majority are with you—A. Yes, I think we can make it.

- Q. Well, what do you base it on? You are not certain as to whether or not a proper canvass has been made?—A. I am not certain that a complete canvass has been made but we have been assured by our associates that that is the feeling of the majority of their members and we know the feeling of the majority of our own direct members.
- Q. Are you aware, Mr. Harris, of any letters which have been sent out by your association or by your affiliates to retail merchants urging that they take a certain course of action? Are you familiar with any such letters? Or, to your knowledge have any such letters gone out?—A. Yes. One was sent out.
 - Q. By your association?—A. Yes.
- Q. Would you be prepared to table that letter?—A. I would be very pleased to table it.
- Q. Could you procure copies of the letters sent out to retailers by your affiliate organizations?—A. We would have to ask them.
- Q. This question may not be fair, but you say you will try to procure copies of those letters.—A. I shall try to be as helpful in every way that I can.
- Q. Would you say that as far as retail merchants are concerned their action in opposition to the government's proposed legislation was spontaneous, or was it inspired?—A. Inspired by whom?
- Q. By either the association which you represent or by the manufacturers.—A. But we are retailers.
- Q. You are a retailer.—A. We are self inspired. Does that answer your question?
- Q. Thank you very much. But we as members of parliament received letters from individual retailers. Did your council, or whatever you wish to call it, write to those individual retailers to take that action?—A. Yes, as far as the Canadian Retail Federation is concerned, we did. But may I enlarge on that answer?
- Q. Yes, surely.—A. We believe that members of parliament are our elected representatives and we wish on every occasion to instruct them as to what our feelings are, and we expect that they will represent those feelings in the House of Commons.
- Q. Do you believe that an individual retailer has a fairly accurate and complete knowledge of resale price maintenance? Do you think that he understands it?—A. Every retailer?
- Q. I would say most of them.—A. I think I made the point very clear this morning when I described the different types of retailers. So I think you could reach your own conclusion from that.
- Q. When a communication for example goes out to a retailer insinuating that he is being deceived, that he is in great peril, that he is going to be deluged with mail order catalogues, and that a number of terrible things are going to happen to him, and when he is urged to have his wife and his children and everyone else that he can interest deluge us with letters, then I think the very nature of that letter frightens him to the point where I say it has not been a spontaneous action. So I wonder to what extent I can put too much stock in that letter which I, as a member of parliament, received from the retail association.

Q. I do not want to give any wrong impression. This letter here was not sent out by your organization. But I have a letter here which I propose to table. This was sent out by a manufacturer.—A. We can take no responsibility for it.

The Chairman: I think it is a little unfair to expect him to take any responsibility for a manufacturer.

Mr. Shaw: I am sorry.

The Chairman: I would suggest that since he has offered to table the letters which he himself sent out, he has met with the requests of the committee. And I also suggest that we hold that letter until the druggists come back.

Mr. SHAW: I intend to, Mr. Chairman.

The CHAIRMAN: We will return it to you on Thursday.

By Mr. Shaw:

Q. I certainly did not intend to create the impression that this letter was sent out by your organization; and that is why I am particularly anxious to secure copies of the letters which were sent out to the retailers by your association, or by the other associations which are affiliated with your association.—A. Perhaps as a member of parliament you have already received them.

The CHAIRMAN: Not what you sent. You received what they sent back.

Mr. Shaw: I received a couple but I thought that the writer had made a mistake when he put them in. I shall be as brief as I can, Mr. Harris.

The CHAIRMAN: the witnesses would like to catch a plane at 6 o'clock or at 6.10. So might we let them go at 5.30? Are your friends going with you?

The WITNESS: I think they are all departing.

Mr. Fulton: You will be back at some time, though. You will give us an answer by letter to the other inquiries?

The WITNESS: Yes.

Mr. Thatcher: This is a most important body and some of us have still not got to the questioning. Therefore I think we should go on on Monday. I have been sitting here for four hours.

The CHAIRMAN: Yes, and you have learned a lot in those four hours.

Mr. THATCHER: Yes, but four hours is a very considerable time.

Mr. Harkness: I am in the same situation. I did not get an opportunity to do any questioning yesterday at all, although I sat here all the afternoon. I have not been able to do any questioning here today. So I would suggest that in the future the people who want to ask questions should put their names in a hat, and the names could be pulled out of the hat by someone.

The CHAIRMAN: I think that would be a good idea. I have tried to be fair, and I have certainly received my share of abuse in trying.

Mr. HARKNESS: I do not say you have not been fair. I think I have just been unfortunate.

The CHAIRMAN: I hoped that the members might make one or two points, bearing in mind the fact that others want to make their points as well.

Mr. THATCHER: Could we not limit the time of questioning to, let us say, 10 minutes for each person?

The CHAIRMAN: 10 minutes to each person, and then the guillotine. I think that would be a good idea.

Mr. Fulton: When can we have these witnesses beck again?

Mr. THATCHER: Could we not finish with them on Monday?

The Chairman: For Monday we asked the electrical manufacturers to come. But perhaps we could delay them.

Mr. Shaw: I do not think we should hold these men here if they have made arrangements to leave.

The CHAIRMAN: I think it would be very difficult to stand down on Monday. What do you think would be convenient to you?

The WITNESS: Could we not possibly defer it until we were able to get the information which you desire? It might kill two birds with the same stone.

The CHAIRMAN: If we delay it until next Friday, that would give them an opportunity to get these things. We shall send copies of the proceedings to you, so that you can review them beforehand.

Mr. Fulton: May I suggest that you advise us by letter of the earliest day which would be convenient to you?

The CHAIRMAN: We shall make a tentative date then for next Friday. And now I want to thank you because you have been through a long, gruelling day, something a little different from your ordinary business.

The WITNESS: And I want to thank you, Mr. Chairman, and members of your committee for the very courteous hearing which you have given us, and I hope the discussion has been as interesting to you as it has been to us.

The CHAIRMAN: It certainly has, and thank you again.

The committee adjourned.

APPENDIX A

MEMORANDUM

Submitted to

The Joint Committee of the Senate and House of Commons on Combines
Legislation

by

The Canadian Retail Federation

The Canadian Retail Federation was organized in 1941 to act in a liaison capacity between retailers of all classes and those agencies of the Government which were charged with the maintenance of a stable civilian economy. The Federation is now established as the permanent voice of Canadian retailing. Its membership is composed of many stores across the Dominion, together with thousands of other retailers in its affiliated associations.

On September 15th, 1950, it submitted a Brief to the Committee to Study the Combines Investigation Act. While that Brief was directed to the broader terms of reference under which the Committee operated, it was also concerned with the traditional trade practice of re-sale price maintenance. It was stated in the Brief that, while there was some division among retailers as to the merits of re-sale price maintenance, by far the greatest majority of distributors believed it was not only a most important factor in the continuance of vigorous, competitive retailing in Canada, but was also in the interest of the buying public. Here is a brief summary of the views expressed at that time to Justice MacQuarrie and his fellow Committee members:

(1) Re-sale price maintenance is a stablizing factor in our economy. It is the most effective method of curtailing the anti-social effects of "loss leader" selling.

- (2) Re-sale price maintenance applies to only a minority of products sold at retail. The public has the protection of an established brand name and the assurance that the retailer, backed by the manufacturer, will guarantee the quality as well as the servicing of his product.
 - (3) Minimum re-sale prices also tend to become maximum prices.
- (4) Consumers have the assurance that they will not be subject to the excessive prices that might be charged in areas of local product monopoly.
- (5) A survey of retailers' margins for price-maintained goods shows that they are by no means excessive in terms of the traditional cost of merchandising particular products. Indeed, more concern was expressed by retailers over shrinking margins which manufacturers allow because of the competitive efforts of the supplier to obtain a larger share of the market—by keeping his price at a realistic level. If he sets his price too high and the product does not sell, the retailer will either switch to another re-sale price maintained line of a comparable character or buy goods which he may price as he wishes.
- (6) It is discriminatory to assume that group action undertaken to effect orderly marketing of primary products is in the public interest, but that similar action in the field of retail distribution is against that interest.
- (7) A manufacturer of an article into which has been put inventive genius, production skill and promotional advertising for the purpose of creating a continuing consumer demand has, by the implied responsibility to back up his product, the assurance in re-sale price maintenance that his reputation will not be debased by loss leader selling.
 - (8) Re-sale price maintenance tends to stabilize production.

While representatives of the Canadian Retail Federation appeared before the Committee to Study Combines Legislation for the purpose of discussing the various points put forward in our Brief, there has been no opportunity for analyzing the opinions of brganizations not in favour of re-sale price maintenance.

In its Interim Report, the MacQuarrie Committee established as its standards of judgment of re-sale price maintenance:

(1) Whether it facilitates or restricts competition. We believe that it is a dangerous assumption to use the word "competition" without any qualification whatsoever. There are certain extreme forms of competition that may not be in the public interest.

An isolated purchase should not be the sole criterion for judging the distributive system—it is protection in continued buying that counts. There are thousands of products which retailers sell today, a reflection of the higher standard of living now prevailing. Years ago, when there were not so many goods, consumers and retailers were better able to compare the value of the simpler and relatively few items then available. The Canadian consumer today not only has to choose from a great array of goods but continues to do so over most of his life span.

The orderly marketing which re-sale price maintenance makes possible gives assurance not only of stable quality in recurrent purchases but also the knowledge that there will not be the need to search for fractional advantages in price by shopping in more than one retail outlet. Where re-sale price maintenance does not apply, some consumers will pay slightly more, others slightly less for the same product. Re-sale price maintenance offers all consumers the same buying opportunity consistent with our democratic principles. Where the buyer has no brand assurance and production is only to meet a price, there may be a corresponding decline in quality—but the consumer has no simple method of knowing, which means that the so-called advantage that is obtained is merely illusory.

- (2) The Committee also stated that the encouragement of economic efficiency was a standard to judge re-sale price maintenance. Again we do not believe that should be the only measure for appraising this pricing system, although we will show that there is a stimulus to marketing economies. There is a more important social consideration. It should be emphasized that most products sold under re-sale price maintenance incorporate only a small variation in price—and sometimes not at all—for the same article sold in every province of the Dominion. This has an important benefit in equalizing the standard of living of all Canadians across the country, in a way which would not be possible if the principle of maintained price were made illegal. The western provinces and the Maritimes now benefit under this method of pricing.
- (3) Purportedly re-sale price maintenance eliminates competition at the retail level. This is only true in the academic sense. Manufacturers who offer suggested re-sale prices do not do so without excellent knowledge of the market. Those prices are established through continuing and comprehensive knowledge of public acceptance for their products at retail. They have to take into account not only comparable lines offered by other manufacturers who suggest re-sale prices but also products of a similar kind which are not price-maintained.

Retail margins for comparable price-maintained goods offered by different manufacturers do not vary to any marked degree because there is a knowledge at the manufacturing level of the established cost of distributing that class of goods.

It should be emphasized here that there is a much wider variation between the margins required by the retailer to merchandise different kinds of goods than there is in the distribution costs of retailers selling the same goods. While there are exceptions, it applies to by far the majority of retailers in Canada.

It is suggested by one submission to the MacQuarrie Committee that re-sale price maintenance encourages wasteful advertising. The contrary is the case. The national advertiser of re-sale price maintained goods assists all retailers in bringing the special advantages of his product to the attention of the public. He also helps the individual retailer in arranging advertising displays at point-of-sale. This enables the small retailer to compete with his larger competitor in a way which would not otherwise be possible. Indeed, if national advertising and point-of-sale assistance such as this were not forthcoming, the individual retailer, to stay in business, would have to do his own promotion which, taken in the aggregate, would be conclusively more costly than the present method.

In other words, it would add to distribution costs if the individual retailer had the resources to undertake a comparable campaign. Of course, in most cases he could not do so, which would lessen his ability to compete.

(4) It is stated as factual that re-sale price maintenance tends to fasten higher margins on the economy than would otherwise be the case. These margins are supposedly set at a level which will keep in business the most inefficient retailer. This is completely unsubstantiated and incorrect opinion.

The manufacturer obviously must set his price and that of the retailer selling his product at a level which will obtain a maximum of dollar profit in terms of the total volume of sales rather than the margin which applies on one item. If his margin is too high—and therefore his price—he will lose some of the market to his competitors and much of his profit. He will dissuade his retail account from buying further goods from him. The retailer will switch to the competitor who gives him the assurance of sales at a reasonable profit, since a higher margin on goods which do not sell will not pay the retailer's cost of doing business!

(5) It is also added in a submission to the Committee that the more efficient retailer who does not require the average margin of profit provided from the

manufacturer in a re-sale price maintained article has no means of passing the savings on in the form of lower prices. Since the retailer will undoubtedly be selling other goods which are not price-maintained, it is perfectly in order for him to reduce the prices on those articles or accept higher trade-in allowances on re-sale price maintained goods where this is feasible. If he just decides to keep the product of his own efficiency, the Government will take at least one-half of it from him in the form of taxation!

The Committee states that it did not centre its attention upon individual cases of maintained prices and their possible isolated consequences, because if the application of re-sale price maintenance were restricted to a limited number of goods the problem thus involved would not deserve the Government's consideration.

We submit that re-sale price maintenance, which is an effective instrument for the orderly marketing of consumer goods in the public's interest, does not apply to more than a fraction of goods sold at retail and only has a very minute impact on the cost-of-living index. Therefore, it certainly does not deserve the Government's consideration.

Legislation on the subject of re-sale price maintenance neither merits the urgency with which the Interim Report was introduced into Parliament nor justifies in any way the claim on the valuable time of the members of this Committee when the country faces far graver problem!

There is, indeed, a basic misconception in the argument put forward by the Committee to Study the Combines Legislation. It states that re-sale price maintenance to be effective must be enforced. It says that this enforcement—i.e. presumably the refusal to supply goods to the retailer who cuts prices—is a "private system of law".

Nothing could be further from the truth. The very legislation which the Committee recommends is a removal of the basic freedom which the individual now receives under our statutory law. It would eliminate the democratic right of a corporation or an individual to offer their products or services to whom they please.

If legislation is enacted that requires a supplier to continue making available goods to a distributor to whom he no longer wishes to sell, it would "freeze" the manufacturer's outlets so that it might not be possible for him to supply other retailers when he wished to do so. It would not only encourage higher distribution costs, since the retail structure is dynamic in that it adapts itself to population changes and changing selling techniques, but more importantly, it would be an unwarranted invasion of one of our basic freedoms.

The Committee says that the general level of prices as a result of re-sale price maintenance is higher thant it would otherwise be. While there cannot be conclusive evidence on this point, it should be pointed out that there is sufficient data vailable to indicate that retail margins on re-sale price-maintained lines are, if anything, lower than those lines which are not price-maintained-quite contrary to the conclusion in the report. Again the advantage of a better established market enables the manufacturer to obtain the economies of large-scale production. All this encourages economic efficiency.

The word "maintained" in the phrase "re-sale price maintenance" is a misnomer since it gives the impression that prices of goods in this category are only rarely changed. Such is not the case. While they are not subject to the disadvantages of day-to-day fluctuations, the manufacturer must quickly adjust his prices to changing demand and cost factors or eventually go out of business. He always has competitive products which he must meet in price-quality terms. Where competition does not exist, then there is a monopoly, which is subject to all the provisions of the Combines Investigation Act.

The practice of re-sale price maintenance has done much to maintain the position of the small retailer in this country. It should be remembered the distribution in Canada is almost more difficult than it is in any other country in the world. There are fewer than four citizens to every square mile, so there must be retailers in the scattered communities across the country, if all Canadians are to share equally in our rising standard of living.

While re-sale price maintenance will by no means keep the inefficient operator in business (since in most cases it only applies to a small portion of his products), it does enable the average retailer who conducts his business efficiently to continue the great contribution which he is making to the Canadian public.

In the 1941 Census, independent retailers in Canada did 70.3% of the total business transacted. Chain stores did 18.7% and department stores 11.0%. In 1949 the comparable Dominion Bureau of Statistics' figures were 72.8%, 17.0% and 10.2%. It is quite apparent that the smaller retailer in Canada is effectively maintaining his competitive position. He should not be hampered in continuing to do so.

The form of legislation that has been proposed by the Committee to Study Combines Legislation would restrict competition, raise distribution costs and moreover abolish our principle of Freedom that a man may offer his goods or his services to whom he pleases.

We recommend that your Committee reject this dangerous recommendation which could undermine the basic of Canadian democracy.

All of which is respectfully submitted on behalf of the CANADIAN RETAIL FEDERATION.

BY H.G. COLEBROOK, President,

November 19th, 1951.

HOUSE OF COMMONS

m

Canada. Combines zins atten; Joint Che on 1851 (2)

Fifth Session—Twenty-first Parliament
1951

(Second Session)

-51054

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE No. 6

MONDAY, NOVEMBER 26, 1951

WITNESSES:

Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association.

Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian General Electric; Mr. C. H. McBain, Canadian Westinghouse Co., Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd.; Mr. J. R. Longestaff, Renfrew Electric and Refrigerator Co., all representing Canadian Electrical Manufacturers Association.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951



MINUTES OF PROCEEDINGS

November 26, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairman, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding,

Also present:

For the Senate: The Honourable Senators Aseltine, Golding, Lambert.

For the House of Commons: Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Fulton, Garson, Harkness, Hees, Jutras, MacInnis, Mott, Murray (Oxford), McLean (Huron Perth), Shaw, Stuart (Charlotte), Thatcher, Welbourn.

In attendance: Mr. F. R. Hume, Counsel, Canadian Electrical Manufacturers Association, Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association, Mr. W. C. Kennedy, Frigidaire Products, Mr. L. E. Butters, Canadian General Electric, Mr. C. H. MacBain, Canadian Westinghouse Co. Ltd., Mr. C. L. Gulley, Superior Electrics Ltd., Mr. J. R. Longestaff, Renfrew Electric & Refrigerator Company, all of Canadian Electrical Manufacturers Association.

Mr. Hume was called and introduced the representatives of the Canadian Electrical Manufacturers Association.

Mr. Simpson was called, tabled a brief on behalf of the Canadian Electrical Manufacturers Association, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Messrs. Butters, Kennedy, MacBain, Gulley and Longestaff were called and questioned.

Mr. Fulton moved that the Steering Committee in conjunction with Committee Counsel and the Combines Investigation Act Commissioner formulate a series of questions to be put to all manufacturers groups coming before the Committee; and in cases where the witnesses wish that the names of the manufacturers producing figures be kept secret, Committee Counsel and the Combines Investigation Act Commissioner sit in with the witnesses in order to assure the Committee that the figures are representative.

After discussion, and the question having been put on the said motion, it was resolved in the affirmative.

It was agreed that ten minutes be the maximum time allowed any one member for one series of questions.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Tuesday, November 27, at 10.30 a.m.

A. L. BURGESS
Clerk of the Committee



EVIDENCE

NOVEMBER 26, 1951. 10.30 a.m.

The CHAIRMAN: Will you come to order, gentlemen?

Mr. Thatcher: Might I ask one or two questions before you start Mr. Chairman?

The CHAIRMAN: I just wanted to point something out, if you don't mind.

Mr. THATCHER: Oh, all right.

The CHAIRMAN: First of all we are accumulating quite a file of correspondence and wires aside from briefs from various groups. I think it would be very useful if we were to have a meeting of the steering committee, not after this meeting, but say later on this afternoon, after orders of the day at 3.30, when we can discuss them and decide our agenda from now on. Most of this correspondence is addressed to myself, but I think I should mention that we have received a resolution from the Saskatchewan wheat pool on the matter which can be dealt with at the same time.

Mr. CROLL: They lost on Saturday, didn't they?

The CHATRMAN: This is the wheat pool, not the team.

Mr. THATCHER: Mr. Chairman, at the last meeting we received a telegram, I think, from Mr. M. A. Robinson. I am not clear as to what his capacity is. I think you mentioned that he spoke for the T. Eaton Company; is that right?

The Chairman: No, he is a director of the Canadian Retail Federation which was before us, and he wired to say that the brief was not unanimous.

Mr. THATCHER: Where do Eaton's come in?

The CHAIRMAN: That was his company.

Mr. THATCHER: He is an official?

The CHAIRMAN: He is an official of Eaton's and that is why he is also a member of the Canadian Retail Federation.

Mr. Thatcher: Just one other point, Mr. Chairman; can you tell me, at this point, if there have been any retail groups who have sent in wires or letters who are in favour of the abolition of price maintenance?

The CHAIRMAN: Not to my knowledge. The clerk has a great number of wires there and all I can say is they are apparently from retail groups all over the country and most of them added their views to that of Mr. Harris, advising that they are in accord.

Mr. Thatcher: Can we assume that Eaton's are the only ones that protested or are in favour so far, from the representations that have come in?

The CHAIRMAN: I would not so judge. Mr. Harris himself said, you will recall, that he spoke for a majority but not for everyone in his association.

Our witnesses this morning are the Canadian Electrical Manufacturers' Association. They have submitted their brief and I expect most of the members have read it. Mr. B. Napier Simpson, the general manager, is the one who signed the brief.

Mr. F. R. Hume: Mr. Chairman, I am F. R. Hume, counsel for the Canadian Electrical Manufacturers' Association and I thought I should just introduce the matter to the committee.

The CHAIRMAN: Oh, yes.

Mr. F. R. Hume, Counsel, Canadian Electrical Manufacturers Association: I thought I should introduce the matter to the committee and tell the committee about the Canadian Electrical Manufacturers Association; that it is a duly incorporated dominion non-profit organization, and that the general manager is Mr. B. Napier Simpson. He will give you a short summary of the brief and will be glad to explain in more detail the position of the association.

The brief which this committee has received arose out of the submission made originally to the MacQuarrie committee; and I want to tell this committee that there was an invitation, when the original draft submissions were sent to all our members about a year ago, that they make their comments as to their views supporting or disagreeing with this submission. No contrary views were received; therefore the board of directors have requested me to say that they believe this brief represents the views of the organization members.

In order to assist this committee the General Manager will be discussing the brief very briefly and will be available for questioning, but as Mr. Simpson is general manager of this organization and is not an electrical manufacturer it is my pleasure to introduce certain gentlemen who have come to Ottawa to be here to assist in the event that there are some questions which members of the committee might ask which Mr. Simpson or myself might not be competent to answer. I should like to tell the committee first of all that these gentlemen are all officials of member manufacturing organizations and they are here in their capacities as members of this committee of the Canadian Electrical Manufacturers Association. Mr. W. C. Kennedy is first vice-president and general sales manager, Frigidaire Products of Canada, Limited; Mr. L. E. Butters, is manager of the appliance division, Canadian General Electric Limited; and now I wish to introduce Mr. C. H. MacBain, who, until recently was sales manager of the appliance division of Canadian Westinghouse Company Limited; then I wish to introduce Mr. C. L. Gulley, president of Superior Electrics Limited, Pembroke, Ontario; and finally, Mr. J. R. Longstaff, president of the Renfrew Electric and Refrigerator Company, Limited, Renfrew, Ontario. These gentlemen are here to answer any questions which may be asked which Mr. Simpson in his capacity as general manager of this association may be unable to answer, and they have consented to assist him.

I think, sir, without any further delay, I should like to introduce to you Mr. B. N. Simpson.

B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association called:

The WITNESS: Mr. Chairman, ladies and gentlemen, I would just like to state that in certain respects this brief may be very inadequate because of the fact that we were rather pressed for time in order to give it to you on time. We only got the word that we were to appear on Friday, and you know how it is, with the football game and everything, and offices being closed on Saturday—well, I drove down, and I had to pick up most of the members of the committee who appear here with me today and drive them down in my car to make sure that we got here on time. So I will ask you to excuse any inadequacies which may appear in our submission.

The Canadian Electrical Manufacturers Association, which is a non-profit organization, carries on under a dominion charter and was incorporated in 1944. It comprises 145 member companies within the industry which would represent about 90 per cent of the dollar turn-over. There are some small

companies, quite a large number in fact, who are not members; but in dollar volume they represent a very small proportion of the industry. The industry directly employs about 60,000 persons and if you added those dependent on the products of the industry for a living, the distributors and the wholesalers and the electrical contractors and so on, you would have it up to about 200,000.

I do not need to go over all the objects of the industry. They have been set down here. You will notice that it is to promote the standardization of electrical products. We work very closely with the Canadian Standards Association which is a quasi government body. You will note that one of the objectives of the association is for members of the association to appear before and co-operate with legislative committees, government departments and agencies—and that is why we are very pleased to be here this morning.

There is one thing to which I would like to refer this morning, Mr. Chair-After the offices were closed for the afternoon, about 6 o'clock, we received a telephone call—one of my staff was working late—from Mr. Burgess, the clerk of your committee, requesting a list of items as large as possible showing list price, the distributor's discount, retail price and what have you; and, if possible, along with that a comparative list of other items on which resale prices were not maintained. I was obliged to send a wire back saying that the offices were closed on Saturday and that it was impossible to procure the information requested; and, secondly, that the information is therefore not available. I would like to say, sir, that when this association was established, the first policy that the board laid down was that no prices or discounts would ever be discussed in any association meetings. You can readily understand that, as it would conflict with the combines legislation, and for that reason it has always been forbidden. The reason I mention this is that this list you asked me for is not available within the association offices. As an officer of the association I have no knowledge whatever of the price policy or merchandising policy of any individual manufacturing company within my member-That is one of the reasons why I directly could not provide you with a list of items such as you require.

Referring to the interim report of the MacQuarrie committee to study combine legislation, dated October 1, it may be stated that while the manufacturers themselves are not directly concerned with the subject of resale price maintenance, they are concerned with the welfare of the distributor organizations and retail outlets, and for the well-being of a system of merchandising goods which has received wide public acceptance for a long period of years.

highly technical and their successful use requires instruction in operation and skilled maintenance. These products are bought at infrequent intervals and the reputation of the manufacturer is largely dependent in the length of successful service which they give. It is, therefore, necessary for the manufacturer to ensure that properly equipped and qualified dealers, who will remain in business, handle his products so that the public will receive value for its money. Value in this case does not mean first cost alone, but length of time the articles give satisfactory service when related to first cost. Clearly it is a false bargain to purchase an electrical appliance at a low price if it fails in service, and for which it is impossible to obtain parts or service. To a lesser degree this is equally true if such parts and service are not readily available. In the sale of these products the lowest cost dealer is not necessarily the most efficient since the public derives the greatest benefits from the dealer who sells at a reasonable price and then gives the most efficient service.

You will pardon me, Mr. Chairman, but at this point I have to quote from the brief. I know that your rule was that briefs were not to be read, but I

think for the purpose of my review I shall have to refer to certain parts of it, with your permission. I do not think it is necessary for me to go through these paragraphs 2 to 5. If you will bear with me I would like to read verbatim section 6, which is comparative price information in which I think your committee would be interested.

6. The fact that consumers have not suffered because of the suggested "resale prices" in the electrical manufacturing industry, but have undoubtedly benefited thereby, may be illustrated by the following examples which have been furnished by member companies having products on the market today, which are comparable to those marketed in 1939, but which, since that date, naturally incorporate improvements in design, convenience and operation.

Example 1—Company "A" In 1939 sold a 6 cu. ft. electrical refrigerator for \$284.50. The published price for this refrigerator in June of 1950 was \$299.75. It is interesting to note that except for the added increment due to the application of excise tax on April 10, 1951, the price of this refrigerator would still remain at \$299.75—an increase of \$15.25 only, over a period of twelve years. If the price of this refrigerator had followed the increase in the cost of food, it would not sell at \$299.75 but at the equivalent price of \$710.40.

If it had followed the increase in the price of clothing it would not sell at \$299.75 but rather at \$608.26.

If it had followed the increase in the index for labour within the electrical industry, as quoted by the Dominion Bureau of Statistics, it would not sell at \$299.75 but at approximately \$860.00.

If it had followed the increase in the price of ferrous and non-ferrous metals, as given by the Dominion Bureau of Statistics, it would not sell at \$299.75 but at approximately \$680.00.

Example 2—Company "B" In 1939 company member "B" marketed a 7.9 cu. ft. refrigerator with a suggested list price of \$319.00—today company "B's" 8 cu. ft. refrigerator has a suggested list price of \$399.00. Eliminating, however, the amount of increase caused by the application of the excise tax in April 1951, this refrigerator would sell today at \$342.00, which it will be noted is only 7 per cent increase over 1939 prices.

In 1939 this same member company marketed a washing machine with a suggested list price of \$127.00—today this washer sells at a suggested list of \$184.50, but if the special excise tax is eliminated, the present day price would be \$154.50, which it will be noted is anly an increase of 21.6 per cent over 1939 prices.

Example 3—Company "C" This company in 1939 marketed a washing machine at a suggested list price of \$144.50, which today sells at \$189.50. Eliminating, however, the special excise tax, this machine would sell at \$151.70, which it will be noted is an increase of only 26 per cent.

Mr. Fulton: At this time may I just ask whether you would not like to make a correction in your brief? If my arithmetic is correct the figure of 26 per cent should be more in the neighbourhood of $5\frac{1}{2}$ per cent. You, see your increase is only \$7 on \$144.50.

The WITNESS: I stand corrected.

Mr. Fulton: It is your favour, I think.

The WITNESS: This was proof-read as carefully as we could, but in the hurry of getting away it was not possible to recheck it.

It is not possible for company "C" to give direct comparisons in regard to refrigerator models, because of a complete change in design and in capacity. On a basis of cubic foot capacity, however, this company states that in 1939

it cost \$40.00 per cubic foot to produce and sell their refrigerator, but that if special taxes are eliminated, their cost of production today would be only \$42.30 per cubic foot. On a cubic foot basis, therefore, this is only a cost increase of 5.7 per cent approximately.

The above examples are only a few of those which could be given, but are considered to be sufficient in number, since in general all would conform

to the same pattern.

In evaluating the above noted per cent increases in prices, it should be appreciated that there have been major increases in labour and material costs since 1939.

Average weekly earnings in durable goods manufacturing increased from \$24.28 in 1939 to \$55.30 in August of this year, an indicated increase of 127.7 per cent. However, a much more relevant index in so far as this industry is concerned, is the index based upon average hourly earnings in the heavy electrical machinery and equipment industry, as published by the Dominion Bureau of Statistics in "Man Hours and Hourly Earnings". As of August 1951 this index stood at 286 (1941=100) indicating a 186 per cent increase since 1941.

The most relevant material index for this industry is the wholesale combined index for iron and non-ferrous metals (Table 5—Dominion Bureau of Statistics Prices and Price Indexes) which indicates an increase of 127.9 per cent over 1935-39 averages.

In fact you will note, gentlemen, from those indices I quoted, they are about double.

In the face of these increases in both labour and materials, the electrical manufacturing industry's completely unrecognized achievement in keeping down prices may be contrasted with other industries in which "resale price maintenance" has not been a factor. Clothing and food are both good examples of such commodities, and the indices of these industries on a percentage basis of a comparison with 1939 prices now stand at 213.8 per cent and 249.7 per cent respectively as quoted by the Dominion Bureau of Statistics, October 1, 1951.

It is felt that these examples provide the most factual answer which this association can give to the most significant question formulated by the MacQuarrie Committee in its interim report, in suggesting standards by which "resale price maintenance" should be judged and which reads as follows:

Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices?

It is submitted also that there is ample evidence in these illustrations to show that "resale price maintenance" does not discourage economic efficiency as has been stated in the interim report of the MacQuarrie Committee.

- 7. In periods of declining prices the publication of suggested "resale prices" by the manufacturer prevents dealers from continuing to sell to the public at the former higher prices.
- 8. Prices of an individual manufacturer's product would vary in different localities, largely dependent upon whether there was more than one dealer in his products. In small communities served by only one dealer, prices would tend to increase out of line with larger communities where there were a number of dealers.
- 9. Large department and chain stores have complete control over the "resale price" of their private brands. Small dealers are entitled to similar control on national brands. It would be most unfair if price cutting should only occur on products handled by dealers whose volume is already too small

to justify having their own private brands. The fact that they can successfully compete with the private brands of department and chain stores indicates that the "resale prices" of national brands are not too high.

- 10. "Resale price maintenance" tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment. If peaks and valleys could be controlled depressions would be eliminated.
- 11. This association agrees with that portion of the interim report of the MacQuarrie Committee dated October 1, 1951, dealing with the "loss-leader" device, and submits that "resale price maintenance" is the most effective, if not the only method, of preventing this abuse.

I would like to refer to that last paragraph of the summary of the interim report of the MacQuarrie Committee:

As to the "loss-leader" device, the committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger: extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity.

I quarrel, gentlemen, with that term "relative scarcity".

Since excise taxes were applied in April of this year, which raised prices to the consumer by a very wide and considerable margin, the appliances industry is well on its way to being liquidated. Employment in the industry is 50 per cent of what it was at this time last year. Production lines are only operating at 40 per cent of what they did last year, and then only because manufacturers are trying to maintain employment to the best of their ability and retail sales in the appliance industry are not more than somewhere in the neighbourhood of 25 per cent approximately, so I quarrel very greatly with the statement contained in the last paragraph. I would like to again read from our brief if I may.

12. Since the greater part of the MacQuarrie Committee interim report obviously refers to technical products or consumer durables of the type manufactured by members of this association, it is important that the peculiar problem involved in the manufacture and distribution of products of this nature be brought to the attention of the joint committee.

These so-called technical products are for the most part "deferrable products" in the sense that potential purchasers may delay buying them for an indefinite period. The demand for such products therefore fluctuates violently over the course of the business cycle. When business is high and consumer expectations rise, or shortages seem likely to occur, or a special tax seems imminent, the demand for such "deferrable products" is increased at a much more rapid rate than in the case of those other products which the customer consumer cannot postpone buying. When consumer incomes are reduced, or when it is expected that incomes will be reduced, or excessive taxes are imposed, the demand for these "deferrable products" is lowered with extreme severity, as I have just explained.

Consequently, the demand for raw materials, labour, and capital employed in the production of such goods is subject to wide and sudden variations. It is also important to recognize the fact that the capacity to produce "deferrable products" is frequently inadequate to the effective demand; and under adverse marketing conditions that the capacity available for producing such goods is also greatly in excess of demand, as is now the case.

These fluctuations while they vary in severity are not at all unusual. The Industry experienced a minor recession in 1949 and is now in one of much more

serious proportions. Between these recurring recessions, as previously mentioned, there are boom periods accompanied by shortages, when it is self-evident that "Resale Price Maintenance" protects the interests of the consumer by established and nationally advertised prices. However important this particular benefit is to the consumer, it is quite superficial to the far more fundamental one of forcing a high degree of efficiency on the manufacturer in order to survive. This high efficiency has been proved herein by the relatively lower increase in the prices of such commodities, when compared to other goods and services which have not been subject to "Resale Price Maintenance".

All the foregoing is submitted after careful study by a special committee appointed by the Board of Directors. We have approached the subject with the hope that the material contained herein may be helpful to you in solving the problem under discussion; and will further your committee's efforts in assisting to suggest legislation which is satisfactory both from the viewpoint of the consuming public and industry as a whole.

I thank you.

The CHAIRMAN: Thank you, Mr. Simpson. Mr. Favreau, one of our counsel, will begin the questioning.

By Mr. Favreau:

Q. You said your association was formed in 1944 under a dominion charter. Now, is that association constituted exclusively of manufacturers?—A. It is indeed. You must be a manufacturer to be a member, no other applications are accepted.

Q. And you state also that these manufacturers control approximately 90 per cent of the total sales of the articles covered by the field?—A. That is

approximately correct.

Q. How many manufacturers would be included in the remaining 10 per

cent approximately?—A. How many in numbers?

Q. Yes.—A. That is readily available from the Dominion Bureau of Statistics. I have not the figure before me but I think it is somewhere over the 300 mark.

Q. So that there would be approximately 450 manufacturers concerned in the field of this particular industry?—A. No, no. That figure in the Dominion

Bureau of Statistics is the total number in the electrical industry.

Q. There would be approximately 150 in this 10 per cent?—A. Yes; as I say, there are small firms with very small dollar volume as you can note

from the figures.

Q. What kind of records of statistics does your association as such keep concerning the trade in general?—A. We do not keep any general record. We have no policy for keeping statistics. You understand this trade association is broken down into a large number of sections and committees on which various manufacturers have representatives for purposes of standardization and so on. Some of the sections, possibly the transformer section, the motor section, generator section, household equipment, refrigeration section and so on might, through the association, gather monthly statistics in order to let them know what the sales were in units only, not in dollars, for the industry, so they can plan for the next year or size up whether they are getting a reasonable portion of the business and so on. It is only done on the request of the sections who feel they need that information and who among themselves wish to do that. It can only be done by companies who are members of that section.

The CHAIRMAN: You have a good strong voice and if you wish to sit down it will be all right.

The WITNESS: Thank you.

By Mr. Favreau:

- Q. You just spoke about numbers of units; would you have any statistics showing the relative number of units sold each year between 1939 and 1950?—A. That, sir, is available from the Dominion Bureau of Statistics listing the different industries.
- Q. Would you explain to this committee as precisely as possible what the different categories or groups of articles are which are manufactured by the group of Canadian electrical manufacturers?—A. I am afraid, sir, you are asking me now for a list of some 5,000 or 6,000 articles.
- Q. I am speaking generally. There are refrigerators as a group and you have electrical stoves.—A. We prefer to call them ranges. I find the question rather difficult to answer, I can run through the whole gamut of refrigerators, washing machines, toasters, sandwich grills—

Mr. Croll: Not so fast, this has to be taken down. Will you start again?
Mr. Fulton: If there are anything like 100 of them it might be better to table the list.

The CHAIRMAN: The question as I understand it is the groups of manufactured products within the industry; is that so?

Mr. Fulton: Yes.

The WITNESS: If I said appliances, that would cover everything which the consumer uses in the household from refrigerators and vacuum cleaners and electrical razors and so on there would be twenty or thirty items I presume, automatic irons, non-automatic irons, and it would comprise a long list.

By Mr. Thatcher:

Q. Is that the main volume of the industry?—A. Oh, no, through you, Mr. Chairman, I would say this is a very rough guess because I have not the figures, but I would think the dollar volume of appliances is not more than 15 or 20 per cent of the total of the electrical manufacturing industry in Canada. The large volume as you will quite realize, gentlemen, is in the apparatus field. You have power development, transformers and generators, circuit breakers, and items of that nature and they, of course, are not subject at all to the matter which you have under discussion because they are usually built to particular specifications for a given power company and for a given job.

By Hon. Mr. Garson:

Q. Custom built?—A. Yes, that is correct. There are those in the industry as you know, particularly large companies, who cover the whole field. There are certain companies within the association who make nothing but appliances and many of those are relatively small. I would add again to emphasize the matter that we have been very, very badly hit since last April with this excise tax and so on, which has reduced employment.

By Mr. Croll:

Q. You are putting a great deal of emphasis on excise tax; do credit restrictions not affect the top 90 per cent?—A. Only in the major appliances. They do affect all sales, of course, but when you apply 15 per cent excise tax to refrigerators, ranges or washing machines, it amounts in dollars to quite a considerable sum. We feel we are very vulnerable because every time they went to raise taxes they put it on electrical appliances, household appliances such as irons and toasters and so on which carry 25 per cent excise tax, and while that amounts to a large percentage of the selling price it is a very strong detriment to buying but it does not run into the volume that a 15 per cent tax applied to a \$300 item does.

The CHAIRMAN: I think it would be better if we let counsel go ahead with the questioning and the members can make notes for cross-examination.

By Mr. Favreau:

- Q. In this field what approximately would be the percentage of custom-made products?—A. I am afraid I cannot answer that question with the available information.
- Q. In referring to your brief at the bottom of page 2 and the top of page 3 I see that you refer to the necessity for servicing being one of the factors or elements to be taken into consideration to justify the principle of resale price maintenance. Would you enlarge on that statement and explain to this committee to what extent and in what manner servicing is concerned with the principle of resale price maintenance?—A. If you will bear with me, I would like to ask Mr. Butters to answer that question.

The CHAIRMAN: At any time you would like to have one of the other members answer they may do so. The only thing I would ask is that you give their names so that the record will be clear.

Mr. Hume: I will be sure that the reporter has the name. This is Mr. L. E. Butters.

Mr. Butters: The servicing and maintenance of a major appliance is an important part of the sale. In most cases a refrigerator is under guarantee and carries a one year guarantee and carries service policy on a defective unit. The quality or success of a dealer in that function is a most important thing. The fact that he must stay in business to fulfil the obligation that he assumes when he sells a refrigerator is important. The initial sale in the case of a major appliance is only one step in the sale as far as the public or consumer satisfaction is concerned.

Mr. Thatcher: But how could that responsibility be affected if resale price maintenance was taken off?

Mr. Butters: Well, it might not be affected adversely in the case of the better dealers who have full knowledge of their costs of operation. Is that enough at this stage?

Mr. FAVREAU: To continue this question of responsibility for servicing in the field, is it the responsibility of the manufacturer or the retailer?

Mr. Butters: The dealer, the franchised dealer has the primary responsibility and the manufacturer, in the case of those who are reputable, supports that guarantee if the dealer cannot.

Mr. FAVREAU: Is it not a general practice, in connection with the cost of servicing done by the dealer, that the final cost is borne by the manufacturer?

Mr. Butters: No. It is actually included in the original sale, in the dealer's profit or margin. It is part of the original sale and is supported by the manufacturer if anything arises which necessitates the manufacturer fulfilling the guarantee.

Mr. FAVREAU: Do you have any figures in percentage as to the proportion of cost of servicing to a dealer—that is with respect to selling price?

Mr. Butters: We have figures of manufacturer's cost but we have not figures available, at least we have not at this time, which would embrace the retail level as well. That would require quite a study. We have ideas, of course, as to what that runs and we do survey the situation from time to time.

Naturally, the manufacturer's part of an arrangement of that kind is to strive at all times to produce a refrigerator that does not require service in the field. So, it varies from year to year.

The figure is available, however, with some study and while, as one of the delegates, I have not all of the material or information here that you might ask for, if it is possible to gather that for the committee to help them in their deliberations, I would be very glad to submit it confidentially from the company.

Mr. FAVREAU: I presume what you have just said is that the cost of servicing decreases yearly with the increase in quality and experience of the

manufacturer?

Mr. Butters: In most cases that will be correct, yes.

Mr. Thatcher: Before Mr. Favreau leaves the point I have something I would like amplified. I am not clear yet, and perhaps Mr. Butters will enlighten me, how the servicing angle might be worse if resale price maintenance was taken off?

The CHAIRMAN: Let us turn to that later. You are fifth on the list and can make your point then.

Mr. Fulton: I think that is a question that should come later.

The Chairman: Part of the reason for having counsel do the questioning is to raise the principal matters in the minds of members of the committee, matters on which they would like further elaboration. I do not think that we should have members break into counsel's questioning. You are the fifth on the list, Mr. Thatcher, so you can hold your questions until it is your turn.

Mr. Favreau: Reverting to the manufacturers who are not included in the list of your members, those 150 or so, are they more concerned with the industry of appliances than with the apparatus field?

The WITNESS: I do not think I could hazard a guess on that. I have no figures which would show me what the percentage would be in either one

category or the other.

They are not a factor in the industry, one way or another as a matter of fact, because they are small as you will note from the approximate dollar value. Subsequent to the war and during the period of shortages and due to consumer backlog which had been built up, there were many small firms which entered the appliance field and began to make perhaps a cheap toaster or cheap iron of very low quality—or some other small products for use say in the house building industry. As far as being a factor in the industry one way or another, although I do not think you can disregard them because they are part and parcel of the industry, yet they are not a factor in the industry.

Mr. FAVREAU: Do you know any of those dealers who are engaged actually in the apparatus field?

Mr. Hume: Do you mean dealers? Mr. Favreau: No, manufacturers.

The WITNESS: I cannot answer the question.

Mr. Favreau: In fairness to your group, there would appear to be, although there may not be, a contradiction in the principle set out on page 5 of your brief—

The CHAIRMAN: Page 5?

By Mr. Favreau:

Q. Page 5—to the effect that resale price maintenance would favour or permit stabilization of the industry and of the market; and there is your other statement on page 6 concerning fluctuations in the market at divers periods—the 1949 and the 1951 recession, for instance. Would you enlarge on that and reconcile the two notions if they can be reconciled?—A. I am afraid your question is not clear to me.

Q. On page 5?—A. Which paragraph?

Q. The second paragraph from the bottom of the page. You state: "Resale price maintenance tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment".

On page 6 you say: "...there are boom periods..." and periods of recession.

Now, at least on superficial reading the two statements would appear to be contradictory although, as I have said, they may not be since you have put them in the same brief. Would you explain for the committee how you do reconcile the two statements?—A. I do not think your reading of the two statements in the first place should be so vastly different. I think they have the same intention and they may be expressed in different ways. However, let me say this. If the products of this industry were left to the law of supply and demand what we say in this paragraph would be perfectly true. But, if the government in a period such as this insists on putting increases in sales tax and excise taxes on these articles and disturbs the law of supply and demand, then, what we have said here is the case.

Mr. THATCHER: Mr. Chairman, did you get that?

Mr. FAVREAU: You would make a distinction would you for periods where, for instance in the interests of public order, credit has to be curtailed to a certain extent?

Mr. Longestaff: We do not agree with this indiscriminate putting on and taking off of taxes.

The CHAIRMAN: Well, if a witness wishes to speak I think he should give his name and be questioned.

By Mr. Favreau:

- Q. You said in your opening remarks that your association as such did not carry information or keep information with respect to prices charged by its members? Is that right?—A. That is correct.
- Q. How do you account for the figures and information on pages 3 and 4 concerning companies A, B, and C? Would they not be figures taken from your files?—A. They would not. When this committee requested a submission from our association the board of directors appointed a committee. Understand that in trade association work, because of the cost involved, it would not be possible for me to have a staff in my office sufficient to do all the things that are required by the members, by the government, and so on, in certain respects. When a problem such as this comes up, through the kindness of member companies, appointments are made to committees of personnel who have knowledge in regard to the matter under discussion. That was the case in this brief. Acting as an association committee, some of the members were kind enough to give me, at my request, the examples which are shown here as a comparison. In other words, I was trying to show in this brief that the percentage of increases for price maintained items were less than those for which I gave you as alternate examples—namely food, labour, materials, and so on. The information was not available in my files. We have no catalogues or price lists of any description in the association offices.
- Q. I wonder, if it please the committee and for the information of the committee, if some of the gentlemen who are here representing some of the large firms or manufacturers of divers well-known products, would object to stating some of their prices as set—for instance the manufacturer's price, the price to the wholesaler, and the price to the dealer.

Hon. Mr. BEAUBIEN: And the consumer?

Mr. Favreau: Yes, and the consumer.

The WITNESS: I think that question should not have been asked and is entirely irrelevant.

The CHAIRMAN: I think it is up to the chairman to decide whether a question is relevant or not. This committee has full power to subpoena any witness and get any information it wants—the same as any court of law. If you do not choose to answer the question for reasons present in your own mind that is one thing.

The WITNESS: I stand corrected in regard to the fact that the question is irrelevant. I wish to say this, however. These gentlemen have been loaned to me in an advisory capacity in order to answer the questions as far as they are able. Pricing, however, is a matter for each individual company and we can hardly expect any one of these gentlemen who, in spite of the fact they are persons who might be termed friendly competitors, to stand before this committee and give his manufacturer's price, his jobber's and retailer's discounts, and so on. Those figures are their own private property.

I am sure if the committee requires it they would be kind enough to co-operate by furnishing it to the association office for your confidential use; but I think you can hardly expect them, being as I said friendly competitors, to give away what is ostensibly private information of their own companies.

Mr. STUART: May I say-

The CHAIRMAN: Just a moment, Mr. Stuart.

We have already had such information provided to us from, for example, the druggists. This committee is not going to be able to discuss facts, as Mr. Hees pointed out the other day, unless we have figures. I appreciate that you, as manager of the association, have asked these gentlemen to come in an advisory capacity and it makes it difficult for them to come forward individually and give their company's pricing policy. However, this committee has full right and full power to subpoen any one of these companies as a witness before us. I thought it might be easier, from the point of view of the industry, to provide it through the association rather than have us select one or two individual companies; but let us make it quite clear—if this committee wants information this committee can get that information.

Mr. Hume: While the discussion was going on I consulted with Mr. Butters and Mr. Kennedy, the two closest to me and they both agree they would be very pleased to supply information which they would ask the committee to keep confidential in its deliberations because it is information which they do not want their competitors to know. That information would be made available, and they are perfectly agreeable as to that point; however, they do not want to have it placed on the record of these proceedings and published.

Hon. Mr. Lambert: Mr. Chairman, in connection with the other witnesses here frank statements have been given with respect to what was regarded as a fair and average mark-up between the manufacturer and the retailer. Those statements were given without hesitation or delay. Now, if it is not possible for the witnesses to inform this committee as to the mark-up in price on their products between the manufacturer and the dealer, then in my opinion we are without the most important information that we want.

The WITNESS: Mr. Chairman, in my opening summary of this brief this morning, you may remember that I stated that at 6:00 o'clock on Friday night, when all the offices were closed, certain price information was requested which was absolutely impossible for me to get, also having regard to the fact that on Saturday and Sunday all offices were closed. So I could not bring that information to you this morning. You may remember also that I telegraphed to Ottawa, when we received this short notice, and I requested a postponement of this meeting. But that postponement was not given and we were required to be here.

The CHAIRMAN: On this point, might I say that this parliamentary committee was set up as a consequence of demands by manufacturers and retailers across the country for a further investigation. Most of the associations which already had made representations to the MacQuarrie Commission made this request and it was thought that the very people who asked for this further inquiry would come forward with facts and figures.

The WITNESS: Yes, Mr. Chairman, but the time factor did not make it possible for us to bring that information to you, because it would have meant contacting a number of companies, and that was impossible in the short time available.

The CHAIRMAN: I would therefore raise the question of whether or not there is any point in our going on until we have the facts and figures.

Mr. HEES: Mr. Chairman, I think that the objection which has been raised to producing the facts and figures is a very reasonable one. I think it is unfair to ask one competitor—although the various competitors may be sitting together on the same board—to tell another competitor what his mark-ups are. However, I do think that it is reasonable to have that information submitted as Mr. Harris said he would submit such information on behalf of the retailers—by listing the various companies as company A, company B, company C, and so on. Would that not be quite fair and agreeable to you?

The WITNESS: Indeed!

Mr. HEES: You would be willing to give the information which has been asked for but not according to specific companies, such as General Motors, and so on. Is that right?

The WITNESS: That is correct and it was my intention to make clear to you in my previous statement that we would get it for you, but there had been no time to do so before we came down here today.

By Hon. Mr. Garson:

- Q. Had you not made any preparations at all to get it before you got notice to that effect from this committee?—A. Very definitely not, sir. This is an industry brief on resale price maintenance.
- Q. In spite of the fact that you had made representations before the MacQuarrie Commission as a body?—A. I received a letter from Mr. Justice MacQuarrie which stated that the committee would study a rewording of the Combines Investigation Act; and there was added to the letter a rider stating that in view of the previous report brought down by the Royal Commission on Prices, would we also state our views on the question of resale price maintenance?

Q. That is right.

The Chairman: Excuse me, Mr. Simpson, but might I say that that was not a rider to the letter. It was, perhaps, the largest paragraph in the letter which Mr. Justice MacQuarrie sent out to all groups concerned. I think I read it into the record at the last meeting; and the fact is that this enquiry was not a matter of rewording the Combines Act, but one of studying the implications of the Combines Act, and the attention of everyone receiving that letter was explicitly drawn to the sixth paragraph which said:

That particular attention would be given to this matter of resale price maintenance.

By Hon. Mr. Garson:

Q. Might I ask the witness this question: was your association identified with the request made by the Canadian Manufacturers' Association for the setting up of this committee to go into this question?—A. We are not connected with the Canadian Manufacturers' Association, sir.

Q. You say you were not identified with the request that this parliamentary committee be set up to consider this matter?

Mr. Hume: We are the Canadian Electrical Manufacturers' Association.

Hon. Mr. Garson: Was not this association which is appearing here this morning identified with the request which was made to have this parliamentary committee set up for the purpose of studying this question?

The WITNESS: No.

Hon. Mr. Garson: You say it was not identified with it?

The WITNESS: No.

Mr. Croll: Did not the MacQuarrie Commission ask you for the facts and figures, the same information that we are now trying to obtain from you?

The WITNESS: No. They did not ask for any figures whatsoever.

Mr. Fulton: But you personally gave evidence before the MacQuarrie Commission?

The WITNESS: No, we did not. We did not appear before the commission and we were not asked at any time for price figures.

Mr. Hees: How long do you think it would take your association to produce the figures in the form you have agreed would be a fair one, such as company A, company B, company C, if you are requested to do so?

The WITNESS: Well, Mr. Chairman, if it is limited to a reasonably small number of companies, that information might be supplied in two or three days.

The Chairman: I cannot understand why secrecy is necessary so far as these companies are concerned, in view of the fact that the druggists, when they came before us last week, produced 10 pages of detailed information concerning manufacturers' prices, mark-ups, and retailers' prices on practically every line of price maintained goods that they handle. For example, here on page 9 you will see that the whole page concerns various brands of toothpaste, well-known toothpaste, and shows the prices at which the manufacturer sells them to the retailer, and the prices at which the retailer sells them.

Mr. Fulton: Yes, Mr. Chairman, and we also asked for additional information with respect to manufacturer's prices, did we not?

The CHAIRMAN: That is right.

Mr. Fulton: Yes. You see, there are only the two sets of figures given in the druggists' brief.

The CHAIRMAN: I see your point, Mr. Fulton.

Mr. Fulton: We have asked the retailers for something considerably more than that.

The CHAIRMAN: Going back to the manufacturers' cost.

The WITNESS: Our association is a trade association. As I have said, it does not offer advice with respect to the retail price, or with respect to matters such as a price discount. Therefore the submission of this association has no such information. On the other hand, this committee may call individual members and thereby get that information. But as an association, we have not got the figures and we would never normally procure those figures, because it would be a matter foreign to our activities.

Mr. CROLL: Mr. Chairman, have we got the wrong people before us today?

The CHAIRMAN: I am inclined to think that way, Mr. Croll. I think we have some of the right people here, but they are here under the wrong auspices, in fairness to themselves and to their companies.

Mr. Macinnis: Mr. Chairman, to save time, could we not, at this stage, confine ourselves to such questions as these people are able and willing to answer? If we desire to have further evidence, then we will have to take steps to bring people here who will give it to us. I think we would need a great deal more than the information which we get in this brief. Consider page 3, for example, where it speaks of the refrigerator which was sold in 1939 for a price of \$284.50, and where it says the price would now be, if it were not for taxes and so on, \$299.75 Surely there must be something wrong there. That refrigerator, unless there was an undue mark-up on the manufacturer's price, in 1939 would be selling at below cost; they would be going in the hole on everyone.

The Chairman: Order. As to the actual point which Mr. MacInnis has raised, that is a point which the committee must now decide. At this time it is obvious that counsel cannot follow its line of questioning as to mark-ups because these gentlemen are not in a position to supply the necessary figures. Does the committee therefore now wish to go on with examination on the general aspects of the brief, or does the committee wish to adjourn, whereupon we might have a meeting of the steering committee this afternoon, to decide which of the actual companies in this industry we would like to have come before us, and to decide exactly what we would like to ask them to bring with them, when they come before us.

Hon. Mr. Garson: I think we can dispose of this present question, Mr. chairman much more summarily and satisfactorily than following that device. The gentleman who spoke just a moment ago I think is correct in saying that the trade association, under the Combines Investigation Act, did not discuss prices at this period and therefore it is not in a position to offer suggestions relating to them on this particular occasion. And I would suggest that the trade association therefore could not be accused of breaking the Combines Investigation Act if, at the request of this committee, it got the material which has been suggested that it get, in the form of, let us say, company A, company B, company C, and so on, showing he manufacturer's cost, the manufacturers' selling price, the distributors' mark-up, and the retailers' price, in connection with a typical list of appliances. I think that could be done, so far as this committee is concerned, much more quickly and satisfactorily in that way than by bringing the manufacturers concerned before us, one by one.

Mr. HEES: Surely!

Hon. Mr. Garson: And I think that Mr. Simpson might be the very individual from whom to gather that information. We might want, I think, perhaps the steering committee to consider that point. We might want to have three or four men come before us who could answer questions with respect to individual manufacturing companies, should any question arise outside of the general material which Mr. Simpson might lay before us, so that we could get information concerning it. We could not ask Mr. Simpson about it, because he would only be a conduit through which this information would come before our committee. On the other hand, if we establish a practice now of calling before us a large number of manufacturers and examining them individually to secure a mass of data, which we otherwise could get in a tabulated form, we shall be here until next June.

Mr. Longestaff: Might I ask if the committee is talking about the manufacturer's price?

The CHAIRMAN: No.

96459-23

Mr. Longestaff: You see, there is a vast difference between the cost and the price.

Mr. HEES: At the meeting on Friday we had quite a discussion with the Retail Trade Federation. I think we all pretty well agreed on how this whole question would be decided; that the question as to whether or not retail price maintenance was a good thing would depend on whether or not the public were being charged a fair price through retail price maintenance, whether a fair price was being maintained; and that the only way in which you could show that would be by showing that the retailer, for instance, takes as reasonable a mark-up on goods that are resale price maintained as on goods that are not; and it was also pointed out that the sale price to the retailer might in some cases be at an even smaller mark-up than on resale price maintained goods. point I was discussing was that the manufacturer might be taking the public for a ride by charging a bigger mark-up. It was agreed, therefore, to get the whole picture it would be necessary to find out whether or not the manufacturer and retailer took a larger mark-up on the resale price maintained goods than on lines of goods that are not resale price maintained. It is now directly up to you, gentlemen, and the committee is trying to help you, to produce figures and sell your case to the public, because the public at the present time, I think perhaps erroneously, are sold on the idea that retail price maintenance is taking them for an unjustified ride. Now, we are trying to help you to sell the public on the opposite point of view.

Hon. Members: No, no.

Mr. CROLL: Mr. Chairman, Mr. Hees must speak for himself.

Mr. HEES: We are all fair minded men here, are we not?

The CHAIRMAN: Order, order.

Mr. HARKNESS: The gentleman said just a few minutes ago that they would be prepared to bring down these figures in two or three days' time on a certain list of articles, and I think we should proceed on that basis and let them come back.

Mr. HEES: That was the idea.

Mr. Harkness: Let them come back in two or three days' time with their cost prices, their mark-up to the wholesaler and the wholesaler's mark-up to the retailer and the retailer's mark-up to the consumer. That is essentially what we want. At the same time some mention was made of the fact that perhaps the figures should be confidential. It seems to me that such a suggestion would be impracticable because we cannot discuss figures in the committee on a confidential basis. Our proceedings go on the record and, of course, the newspaper men are here also. I think the only way we can discuss those figures is in open committee.

Mr. CROLL: Mr. Chairman, you will recall that an exception was made in that regard. It was agreed not to disclose the prices of any individual company by name. It was suggested that the companies be listed a, b, c, and that individual companies be protected in that way.

Mr. HARKNESS: That is all we need there.

Mr. Longestaff: The point I wanted to make to this committee is that it is a quite simple matter for company a, b, c, d and so on to give you that information with regard to their standard rate of discount, and they can certainly tell you the prices at which they sell; that is, we can tell you exactly how much we get for a commodity at the factory, either by way of discount, or whatever other way the accounts may be carried. But if this committee is going to try to find out what the difference is between my factory costs and what I get for it; well, as a factory man, as a manufacturer, I don't know any-

thing about the retail business, my sales department looks after that, that is why I have them. I can tell you what I get for it, but if you want to get the difference between what it costs me to make it and what I get for it, I don't think I can give you that information except on a theoretical basis, I could give you how it works out in theory.

The CHAIRMAN: Well, that is a start, anyway.

Mr. Longestaff: I don't know that I could give you the exact cost.

The CHAIRMAN: It has been pointed out to the committee that with respect to resale price maintenance we have no knowledge at all of the manufacturing cost of resale price maintained goods, and we cannot reach anything like an intelligent decision until we have some information on that point, as to whether they sell for more or less than non-resale price maintained goods.

Mr. HARKNESS: May I ask just one more question, Mr. Chairman?

The CHAIRMAN: There are other members of the committee who want to speak on this point too, Mr. Harkness.

Hon. Mr. LAMBERT: I want to repeat the point I made before. First of all, the examples you gave us of prices as between 1939 and last November, on manufacturers prices are manufacturers' prices?

Mr. SIMPSON: You mean, our list prices?

Hon. Mr. LAMBERT: What do you mean by that?

Mr. SIMPSON: The consumer list prices, the prices at which they are sold to the consumer.

Hon. Mr. LAMBERT: You mean, in the retail shop?

Mr. SIMPSON: Yes, sir.

Hon. Mr. LAMBERT: Well, all right. I think, in view of the statement which has been made in this brief, that this system of price maintenance is merely recognition of the right of the manufacturer to establish the price at which the product will be sold to the public; in view of that statement I think that any witness would recognize the impossibility of this committee to determine the character of that right; and I agree with what this gentleman has just pointed out about the cost to the manufacturer; but I think it is very essential that we should know the price at which the manufacturer makes available to the retailer a refrigerator, one of these lines that are nationally advertised and which all of us have an opportunity of appreciating in the advertisements which appear in our newspapers, journals and periodicals every day. Now, what is the difference between the manufacturer's price and this advertised price, sir? You see, here you have the right of establishing those figures, and I say that we have the right of knowing the spread between the maufacturer's price and the price at which the retailer sells. I think that is very essential, and some of us have noticed a very great difference between the retail price in certain stores and shops and those advertised, say in the large departmental stores under a brand, an altogether different one from the one that is represented in the average retail shop.

The CHAIRMAN: I don't want to interrupt you, Senator Lambert.

Hon. Mr. LAMBERT: I would like to get that information; I would like to make my point clear.

The CHAIRMAN: Just a moment, Senator Lambert. Let me make it clear, there is no doubt that these gentlemen would like to provide that, but I wonder if we should not go on a little further. I think we would like to have the actual manufacturer's cost, the cost to the different manufacturers, and the price to the consumer, that will give us the whole situation.

Order, gentlemen. Mr. Croll is next.

Mr. CROLL: Mr. Chairman, may I suggest this, in order that all may be treated alike before this committee, could we not authorize counsel to formulate a set of questions to which we want a specific answer and then we could turn those over to these various groups, instructing them that we want answers, detailed answers to specific questions. Then they will all be in the same boat and we would do away with a great deal of misunderstanding that might otherwise develop.

The CHAIRMAN: I would suggest that we leave that to the steering committee. I think the steering committee should instruct counsel as to the information it is desired to obtain.

Mr. Fulton: Mr. Chairman, may I make a suggestion? I think the most convenient way of arriving at what we want is if these gentlemen can give us their manufacturing costs. I would hope that they would do their very best to see if they could supply us with that information. However, if they come back and tell us it is absolutely impossible to do that with any degree of accuracy, then would we not be getting at the same basic principle by asking them to supply us with their costs, the factory cost of their line of price maintained articles. Having obtained that then we could ask the manufacturers who do not follow the price maintenance practice to give us the returns to the factory on their articles, and then follow both price maintained and non-price maintained articles through the whole channel. In that way we would get a comparable picture.

The CHAIRMAN: We will have that taken up before the steering committee this afternoon.

Mr. Fulton: What I want to emphasize is that the present witness said that they were agreeable to supplying that information, but said they could not give it to us accurately on the basis of their factory cost.

The Chairman: Mr. Fulton, do you believe there is any manufacturer in Canada today who does not know his factory cost?

Mr. Fulton: No, I think he should know that.

The CHAIRMAN: Do you not think that the manufacturers know exactly what their costs are, Mr. Fulton?

Mr. Fulton: I could not answer that question authoritatively because I do not know whether the manufacturer can tell you his cost per article, personally I should suppose he could; but if a group of manufacturers comes to the committee and says they cannot do that, I have no reason to believe that they are telling a falsehood, so I have no option but to accept their answer. What I say is that if they tell us they cannot, then I suggest we can get at the same basic information as to whether resale price maintenance is good or bad by getting what we can from a factory or a group of factories who follow resale price maintenance, and then asking similar information from other manufacturers who do not follow resale price maintenance. We could ask them to give us exactly similar figures, and we will see how it works out.

Mr. Longestaff: Well, Mr. Chairman, I can assure the committee—

The CHAIRMAN: Pardon me, Mr. Longestaff, you are here as an adviser to Mr. Simpson. If the committee wants your views you will be asked to express them.

Mr. Longestaff: Thank you, Mr. Chairman.

Mr. Stuart: Mr. Chairman, I believe that we should have something on the record that would express the feeling of many Canadians as to this business of resale price maintenance. I have a letter here and I also have some telegrams which I would like to read. The CHAIRMAN: Just a moment, Mr. Stuart, until we get this point cleared up.

Mr. Stuart: I just wanted to put this before the committee to show what the public are looking for. If I might have your permission I would like to read this letter. I have in my hand here a letter which I would like to read for the record.

Mr. Fulton: Well, if that is the line, I have a telegram here that I would like to have put on the record too.

The CHAIRMAN: Order, Mr. Stuart. We are trying to debate the actual question here as to whether or not the manufacturers can supply us figures which will prove this is a good practice or otherwise.

Mr. Stuart: If you will just let me finish my statement. It is in this way that the committee are wasting hours, and hours, and hours, unless you can get down to the manufacturers' costs. There is something wrong and it should be brought out. That is the only way.

Mr. Hees: The gentleman who just spoke a few minutes ago said it was impossible for a manufacturing company to know its cost. I happen to be a manufacturer and in manufacturing if you do not know your cost you are not going to stay in business. If you telephoned your company I know you should be able to get the cost on any article.

Mr. Fulton: Perhaps Mr. Longestaff should be allowed to answer.

Mr. HEES: Is that not fair?

Mr. Longestaff: It is not a correct statement, Mr. Chairman. In the manufacturing business much of your cost is dependent on volume. If you said to me if you do \$1 million worth of business, could you tell me your cost? I will tell you my cost. You must realize the electrical manufacturing business is a highly technical business. I know from conditions in my own plant that my indirect labour is 50 per cent or more of my direct labour. I say that my volume is not \$160,000 or \$200,000 a month; it is going to be \$80,000 or \$75,000. I know before the tax I was doing a nice business but in the last four months I have lost \$8,000 a month. At the end of the year I am going to start with a clean sheet. I am going to cut off engineers, this guy and that guy. On the 1st of January in my organizations—I have five of them—I am going to let about six executives go. You are asking me my cost of a toaster today, and it is about three times what I am selling it for.

Mr. HEES: At a certain volume you could estimate what your cost is?

Mr. Longestaff: Yes, that is right. The committee will have to lay down what that volume is.

Mr. Hees: If you do not provide this committee with those sort of figures it is impossible for us or anybody else to justify something which you are anxious to justify to the Canadian people and all the oratory in the world is not selling a bill of goods to anybody.

Mr. Thatcher: Surely the committee wants to compare the prices of similar electric appliances—sold with and without price maintenance.

Mr. Jutras: That doesn't give us an answer.

Mr. Longestaff: It gives us a major answer.

Mr. Harkness: The particular point is whether a manufacturer can produce his cost or not. I remember very well in the Prices Committee of 1948 we did get costs and in the case of some companies extending over a period of twenty years. I do not think there is any question but that they can be produced for any specific period and I think that is all we require. If we can get

the cost for the past year it will be sufficient for our purposes. There is no question these figures can be produced for any particular year and we should get them.

Mr. Thatcher: Suppose we do get Mr. Longestaff's cost. He is making products which are not price maintained. We are not interested in what he is producing if it is not price maintained.

Mr. HARKNESS: These articles are price maintained.

Mr. THATCHER: Let us get the prices on goods price maintained and goods not price maintained.

Hon. Mr. Beaubien (*Joint Chairman*): Isn't the whole question this: suppose the price of a refrigerator is \$299.75, as example A, I think what this committee wants to know is how much of the margin is the manufacturer's margin, the distributor's margin, and the retail store margin, to bring that refrigerator to a price of \$299.75.

The WITNESS: In other words, you are not asking for the manufacturer's cost, you are asking for the mark-up.

Some Hon. MEMBER: No, no.

Mr. HEES: Mark-up is the difference between selling price and manufacturer's cost.

The WITNESS: That may be.

Mr. Carroll: As to the great difficulty of manufacturers telling what their costs are, don't they file them every year for income tax purposes, and I assume they are doing it accurately.

The CHAIRMAN: I would hope so.

Mr. Carroll: Now, what is the great difficulty of giving us cost prices?

The CHAIRMAN: Mr. Longestaff may talk about fluctuations from month to month which may establish a problem, especially in small businesses, but there should be no problem in bringing forward what the manufacturer's cost was last year because price maintenance is not a new problem. All these firms can and should produce these figures for us, and if they like, as the druggists have done, they need not produce company names. They could call them A, B, C, D, and E. I think the committee agrees on that.

Mr. Jutras: Even on that point I am not clear what is meant by saying, "A, B, C and D." If we just take two or three companies and do not know who those companies represent, I do not think it would amount to very much unless we have some knowledge of what they represent.

Mr. Fulton: I suggest on that point that our counsel sit in with the manager of the association and tell him what we want and satisfy himself that the information being produced is of a nature which will justify the committee's drawing a firm conclusion from it. The committee counsel would see the names and would be in a position to say, "I assure the committee this is as full a report as you would want."

The CHAIRMAN: I think the combines commissioner has a very good fund of knowledge of every one of these major Canadian companies in every field. He is a servant of parliament and from the benefit of his advice they can decide what figures should be brought forward.

Mr. THATCHER: He can give us his figures.

The CHAIRMAN: I had hoped the combines commissioner would be called back as a witness because the evidence he gave earlier was mainly on draft legislation. This branch has been in the field for one-quarter of a century and has perhaps more detailed knowledge than any other branch.

Mr. THATCHER: It is not secret in any way and it would be valuable to the committee. If he had figures for each of the industries we wanted could he make it available to the committee?

The CHAIRMAN: If we had somebody who was in daily touch with all these problems and realized the type of company we should ask about; it is no secret that the combines commissioner has the price lists of all these companies.

Mr. Fulton: He hasn't their cost, and that is what we are after.

The CHAIRMAN: I believe he has costs because in his investigations, not in this field but in other fields, that is one of the primary things to start with. I think we could very profitably have him on the steering committee.

Mr. Carter: I think as a member of this committee I should like to have also an explanation of why one article, made by the same company, should be two or three times more expensive in Canada than it is in the United States, when it is exactly the same article, made by the same company, and the cost price in Canada is double and sometimes triple what it is in the United States. I would like to have some information why that is so.

The CHAIRMAN: Again that is a matter for the steering committee to decide. That sort of information or question would not apply to all companies. I suppose some of these companies are not branches of American parent corporations.

Mr. Fulton: I move the steering committee with our commission counsel and the combines commissioner formulate a series of questions directed to this association, the answers to which they should bring before the committee at a later date.

The CHAIRMAN: Not necessarily just this association. I think Mr. Croll suggested it should be all manufacturers' groups coming before us.

Mr. Fulton: Yes, I accept that.

The CHAIRMAN: Let us deal with this one first.

Mr. Fulton: I think we might incorporate in the motion that our counsel and the combines commissioner sit in with those producing the figures if they want to keep them secret. Committee counsel and the commissioner could sit in so they could satisfy us that these are proper figures on which we can base a conclusion.

Mr. JUTRAS: What does the last part actually mean?

The CHAIRMAN: We will say that company "A" is a large electrical company. As you point out it is not much use dealing with "A" here if we do not know what is behind the figures, but our counsel and the combines commissioner in the steering committee can say that the figures produced for company "A" are accurate.

Mr. Fulton: The information, of course, would be confidential.

The CHAIRMAN: I want to put this motion to the committee.

Carried.

That will be decided by our steering committee at our meeting at 3.30 this afternoon. Now, Mr. Thatcher raises a point; shall we proceed with the questioning on this brief, leaving aside the question of specific mark-ups, retail store mark-ups, about which we were talking for the last half hour?

By Mr. Favreau:

Q. As to the remarks just made by Mr. Longestaff, wouldn't you think it would be possible if the manufacturers want to maintain output and sales, to allow the dealers to pass on some of the margin to their customers in the form of reduced prices? Then, some sales which are not made at the present time could be made.

The WITNESS: That is a rather difficult question to answer as I have already explained to you. The increased prices which are due to sales and excise taxes, and possibly customer resistance owing to the 20 point increase in the cost of living index, have reduced production by approximately 40 per cent and sales are not at that rate. The manufacturers, in attempting to keep their staffs together, because it is hard to build up an organization, maintained those staffs long after they should have from a sales point of view.

I can tell you, and I am talking about major appliances, every manufacturer's warehouse is full, most distributor's warehouses are full, and the retailers have on their floors all they can handle—and they are not moving.

Your suggestion that we just keep on producing—

Mr. CROLL: No, that is not what he said.

Mr. FAVREAU: If you can find a way of increasing sales at the retail level then you would not have to reduce your output so much at the manufacturer's level?

The WITNESS: I grant you that, but they would be out of business in no time at all. Shall I tell you about one of my major companies in the appliances industry, whose employment has dropped from June to now to less than 50 per cent, whose production figures are as I gave you. They were not only in the red for the last four months but so far in the red that I doubt if they can continue to stay in business very long on that basis.

You say: pass on a lesser cost in order to move goods; but you cannot sell at a loss and stay in business.

The CHAIRMAN: I do not think you have the point.

Mr. FAVREAU: I said that if the retailers were allowed to pass on part of their own margin to consumers and thus increase the number of sales of your articles, would that not place the manufacturer himself in a better position—because it would allow the retailer to free himself of the stock which he presently has on hand?

The Witness: Let me answer that in this way. That position might be maintained by a very large and a very strong retailer but, if the small retailer in the appliance business who normally sells these goods did not sell them and obtain the necessary margin of profit which has been given him by the manufacturer, he could not stay in business. If you, sir, bought a refrigerator from somebody at a cut price and you came back two years from now looking for service and he was not there you would not like it very well.

Mr. CROLL: Does Mr. Longestaff have something to add to that?

Mr. Longestaff: Except the whole committee, I would say, is starting to argue on a wrong premise.

Mr. FAVREAU: I am not arguing, I am just questioning.

Mr. Longestaff: The premise of price maintenance in my estimation is wrong. The manufacturer tries to keep his factory going as best he can and he establishes a price to sell at. I will give you an example to make my point, and the example happens to be an electric iron which everybody wants to buy. This is perhaps disclosing something you want to find out.

The WITNESS: Is it an automatic or a non-automatic iron?

Mr. Longestaff: Non-automatic. A while ago we said that in buying a hundred of them the price would be \$2.40. We gave them to the sales department but there was no movement. We got after them and asked why they did not sell them. It was a good iron. "Well—we cannot sell them."

"Why?"

So, I figured it out—worked out what was a normal mark-up and normal discount and I said: "Why do you not put the list at \$5.95." They said: "Oh, well, we can sell them now"—and it is the same price.

Mr. FAVREAU: Would you say the same thing of a refrigerator?

Mr. Longestaff: I am not speaking of a refrigerator, I am speaking as an individual manufacturer. The chairman, however, just told me I was out of order.

The CHAIRMAN: You were not out of order as an individual manufacturer but it was out of order for you to question as a member of the committee. You are here as an adviser to the manufacturers.

Hon. Mr. BEAUBIEN (Joint Chairman): What did you say about that iron?

Mr. Longestaff: A manufacturer tries to produce and keep his factory going. No manufacturer, basically, is interested in how much spread there is between what he gets for the article and what it sells for. That is something for the merchandising business, the retailer.

Hon. Mr. Beaubien (Joint Chairman): Where did you get the \$5.95?

Mr. Longestaff: The \$5.95 represents the normal mark-up for the manufacturer and the retailer and the taxes. The taxes are very important. The retailer does not understand—no retailer understands unless you talk finished prices.

Mr. Thatcher: Mr. Favreau brought up a very important point in his question—

Mr. CARROLL: Mr. Chairman, the other day we said that counsel's line of examination should not be interrupted.

The CHAIRMAN: Go ahead, Mr. Favreau. Just note your point down, Mr. Thatcher.

Mr. Croll: Could we have a little clarification on Mr. Favreau's question? As I understood him what he said in effect was: Assuming that the retailer charges his mark-up as 100 per cent, or whatever it is, if he cuts that mark-up in half or even cuts it lower, will he not increase sales? That was the question. Now, we did not get an answer to it. Let us have an answer from somebody.

Mr. THATCHER: I will give it to you.

Mr. CROLL: No, you are on the wrong side, with those five stores of yours.

Mr. Longestaff: If you went into any retailer and wanted to buy an appliance he would give you 10 per cent or 15 per cent off if you did not tell anybody.

The CHAIRMAN: That is the point, Mr. Longestaff. In other words, they are all breaking resale price maintenance if 'you do not tell anybody'. I think that has a very helpful interruption and perhaps Mr. Favreau can follow along that line.

Mr. Fulton: After all, one of our own members of parliament said the other day that he would break the law if he could get away with it.

Mr. CROLL: That was your interpretation.

Mr. FAVREAU: Is it not a fact that presently, under present circumstances, some retailers are tolerated to the extent of being permitted to reduce some of their retail prices to their customers in order to allow them to free themselves of the stock which they have on hand? I am speaking especially of refrigerators and electric ranges—and small dealers.

Mr. THATCHER: Sure, that is right.

The WITNESS: I would say there are all kinds of people in business and undoubtedly some of them get in a jam at times and financially cannot support themselves—which would necessitate their turning things over at any price they can in order to finance themselves.

I would also like to say, and I am not speaking from definite knowledge, that I would very much doubt if many of those would be penalized. The only case I know of where a dealer had an agency taken away from him was a case where he sold things at \$50 over list price during a period of scarcity. He had the agency taken away from him for selling at too great a profit. That is the only one I have knowledge of where the dealer had an agency taken away from him.

By Mr. Favreau:

- Q. Do I take it there is no present enforcement of retail price maintenance?—A. I, as general manager, cannot answer that question because it is an individual company problem.
- Q. In your brief you refer to different indexes—indexes of man hours, indexes for iron and non-ferrous metals, and so on. As far as your particular industry is concerned would you not think that the electrical equipment and fixtures index would reflect quite accurately the trend of the economy of your industry?—A. I do not know whether there is such an index published.
- Q. I find it in the price index of the Dominion Bureau of Statistics for September, 1951, at page 12—electrical equipment and fixtures, the index being presently 220·2?—A. Against which period?
- Q. Against 1935-39 equals 100.—A. I cannot answer that without knowing on what it was based.
- Q. I am just referring it to you, you might just check up on it. It is given in the September 1951 Dominion Bureau of Statistics Prices and Prices Indexes at page 12?—A. I would be very glad to, because the prices which we have discussed, in so far as we know them, do not bear out anything like that by comparison as you will note.

The CHAIRMAN: On that point, Mr. Simpson, where did you get the basis for these comparisons on food, clothing, labour, and non-ferrous metals?

The WITNESS: From the Dominion Bureau of Statistics index.

The CHAIRMAN: You accept their figures on these items but you are doubtful about the ones in your field. .

The WITNESS: I do not know in what form they are published. I do not know what is included in there. It might be in the apparatus field, or it might be a conglomerate index of both. I do not know.

The CHAIRMAN: Thank you, Mr. Favreau.

At our last meeting, we had two points raised: the fact that certain members seemed to be in a position to do all the questioning, while other members were left without an opportunity to question, although they had questions in mind which they wanted to ask. Therefore we decided to have a sharp 10-minute limit on the questioning, to give each member a chance. I have before me the following list: Mr. Harkness, Mr. Carter, Mr. Mott, and Mr. Welbourn. These members have indicated that they would like to ask questions, but in the past they have never been able to get on.

Mr. MacInnis: Mr. Chairman, I suggest that we do not adhere strictly to the 10-minute rule, and that if the questions asked are important, there be a discretion left to the chair in that respect.

The Chairman: That was the very thing. Whenever I spoke to Mr. Beaudry about his questioning, he would say that his very next question was the most important one of all.

Mr. Fulton: I think we all would feel that way, Mr. Chairman.

The CHAIRMAN: How would it be then for the 10-minute interval to terminate the questioning of a member on the first round?

Mr. MacInnis: I am not going to ask any questions at all today, Mr. Chairman.

Mr. Shaw: What other names have you got?

The CHAIRMAN: Mr. Thatcher, Mr. Fulton, Mr. Hees, Mr. Croll, and Mr. Stuart.

Mr. Shaw: I have two questions.

Hon. Mr. Beaubien (co-chairman): Last week when I attempted to rule on the question I was chastised for trying to limit some of the members who appeared to be asking questions all the time.

The CHAIRMAN: Now, Mr. Harkness.

By Mr. Harkness:

- Q. I think you told us that from the point of view of dollar value, 90 per cent of the sales were made by members of your association. Might I ask what percentage of material would be imported?—A. I could not answer that.
- Q. Well are these goods which are imported price maintained also?—A. I could not answer that either. Perhaps this would assist you. Our own member companies are manufacturers of products. They are in the appliance industry. And in the apparatus field they find it necessary to import certain component parts which are not available in Canada because of the dollar shortage and government interference. So our plants were expanded very greatly, and the Canadian plants were vastly increased because of the necessity of saving United States dollars. That is why some of these greatly expanded plants are in existence today with but a small market for them, and why they now have but nominal production. In addition, there are certain other items which are brought in here by large retail stores, either Eatons or Simpsons which have United States factory connections from whom they purchase directly. I do not know what type of mark-up they get, or whether the United States manufacturers requires them to maintain the price.
- Q. You do not know whether there is price maintenance or not in that connection?—A. No.
- Q. What members of your association employ the policy of resale price maintenance?—A. I could not answer that question.
- Q. You would have no idea of what percentage of your association made use of resale price maintenance, and what percentage of your association did not?

The CHAIRMAN: Would you not try to limit the field of your question? I think Mr. Simpson said earlier that in the major part of their field there was none.

By Mr. Harkness:

- Q. Well, so far as electrical appliances are concerned, what would you have to say?—A. I think that the majority in the appliances field would suggest or recommend their retail selling prices.
- Q. But of them, there would be some who do not?—A. I cannot answer that question definitely because I do not know. It is a matter of merchandising policy and I would not have that information.
- Q. In your brief you stated that manufacturers themselves are not directly concerned with the subject of resale price maintenance? Does that mean that it does not make any difference to the manufacturer from the point of view of profits whether there is or is not resale price maintenance?—A. I say this

advisedly because I do not know; but speaking from the standpoint of pure logic, I would say that the manufacturer of a product makes his mark-up depending on his costs at his factory door; and that in any case is the money which he gets for his product regardless of where it is sold later at retail level. He is interested in his distributors' policy and in his retailers' welfare. He is interested in the reputation of his product, and with the fact that an impression may be created that if that product be knocked down to a low price, it may not be considered to be a quality product. Moreover, he will remember that he probably started from a very small beginning and that it took him from 30 to 35 years to build up his business; and he will remember that he now has a reputation for his product. And then, in most cases he advertises nationally, and that is done without cost to his dealers all across the country who get the benefit of that national advertising. It is a question of the reputation and goodwill of the product in which the manufacturer is interested particularly.

- Q. From the point of view of projecting your factory operations evenly over the years and therefore cutting down the cost of your manufacturing, I refer particularly to paragraph 3 on page 3 of your brief. You are interested in spreading your operations evenly throughout the year, and as a result, of course, your profit will be either big or small, as you indicated here a few minutes ago, because the sales would be down at a certain period of the year. So, if you are interested in resale price maintenance, there is the point of view of spreading the sales evenly, is there not?—A. I do not know if resale price maintenance would have that effect. But if you asked if it is desirable that a manufacturer maintain yearly production at the same rate over the year, it would be very desirable.
- Q. And do you think that resale price maintenance helps to do that?—A. Yes, we feel that it does.
- Q. You are, then, directly interested in retaining resale price maintenance, are you not?—A. Yes and no; for the reasons we have given you.
- Q. The reason I brought this up is that I quoted your statement that you were not directly interested; reading that brief I took it you were directly interested because, if your contention that resale price maintenance is an advantage, as far as the manufacturer is concerned, is correct, then you are directly interested in maintaining it.—A. I have just suggested to you that the manufacturer gets his price for his product at the factory door regardless of where it is sold later. I have just explained to you he is interested in the reputation of that product and the goodwill he has built up over a long period of years. He is interested in the fact that if a large retail organization takes his product and destroys that goodwill by selling it at a low price that the small retailer cannot sell at—
- Q. We are away from the question I asked, Mr. Simpson. Now, if you were not interested in resale price maintenance you would not be here, would you?

Mr. CROLL: Just a minute.

The CHAIRMAN: Mr. Croll, I am the chairman here.

Mr. CROLL: You were not too quick then.

The CHAIRMAN: Mr. Harkness is allowed to proceed with his questions.

By Mr. Harkness:

Q. Is it not a fact you would not be here if you were not interested in resale price maintenance?—A. We are here for the reasons given in the brief.

Q. Well, we heard from one manufacturer that it would ruin his business, in fact he suggested it would ruin it overnight if resale price maintenance were banned. Would that be true of the electric appliance industry?—A. He would lose his business overnight if it was banned?

The CHAIRMAN: In fairness to this witness, this is not referring to any witnesses here; it was mentioned by a witness in another industry.

By Mr. Harkness:

Q. I ask would that be true in your industry?—A. I would say no.

Q. You would say no. I would agree with you.

I was very interested in these examples you gave of various prices, and your comparisons of the price of a refrigerator in 1939 and 1951 and the price of food in the same years. Would you agree that the prices of farm products, that is food, were extraordinarily depressed in 1939?—A. I would have no knowledge of that; quite frankly, that is beyond my field; I would have no knowledge of that.

- Q. If the prices of food were extremely depressed in 1939, would you think that it is a fair comparison to compare the prices of food now and then, and the price of a refrigerator now as compared with then?—A. I would think so because possibly the price of these electrical appliances at that time were depressed also, Mr. Harkness.
- Q. I would doubt that that is the case. As a matter of fact, is not the chief reason that the price of an electrical refrigerator has not gone up from 1939 to the present time more than it has gone up is due to the fact that your volume has tremendously increased in the meantime?—A. Very definitely.
 - Q. That is the reason?—A. Yes.
- Q. Looking at the statistics of the Dominion Bureau of Statistics, I notice that the volume index for the month of October of last year and April of this year, the volume index varied from 914 to 999.5. In other words, your volume was between nine and ten times what it was in 1939, and I think that is the chief explanation of the fact that you are able to sell a refrigerator now at the price you are getting.—A. We would agree to that.

The CHAIRMAN: Time for one more question, Mr. Harkness.

By Mr. Harkness:

Q. The next question then arises from a matter that has already been raised before. I took the trouble to read over some advertisements in the United States papers listing prices of refrigerators and washing machines. I found that there is a General Electric washing machine, 17 gallons capacity, selling in Detroit on November 20, 1951 for \$109.90. Now, that is considerably less than you quote for washing machines here. I do not know what washing machine it was. Similarly, an eight cubic feet refrigerator, a Hotpoint, selling at \$249.95. The price for yours is \$399. What is the reason for that big differential?

Mr. Butters: In the first place I do not think you can commence or attempt to get together on a figure of that kind. I presume it is not the list price. You said you saw these prices in an American paper. There is a lot of price cutting by dealers now both in Canada and the United States. You also mentioned it was a General Electric.

Mr. HARKNESS: As far as the Phillips refrigerator is concerned, the advertisement was put in by the Phillips Company.

Mr. BUTTERS: It was a what kind of refrigerator?

Mr. Harkness: Philco refrigerator, nine cubic feet, \$289.95.

Mr. Butters: That is \$300.

Mr. HARKNESS: \$289.95.

Mr. Butters: I am sorry, I thought you said \$298.

Mr. HARKNESS: Your own refrigerator, the General Electric, eight cubic feet, is selling in the United States for \$299.95.

Mr. Butters: Well, the Philco people might be in a position that they are sacrificing their profit margin, but that is going to be very difficult to try to get-these costs and manufacturers' profits-in a picture because it is not static by any means. It would be pretty hard to answer that question or make a comparable statement without knowing all of the facts so far as each refrigerator is concerned. I could tell you this, that in the United States we have a 10 cubic feet refrigerator—I have just set down some figures here when we got into this discussion on a comparison of prices. Suppose, for instance, we, as a manufacturer, purchased from the General Electric Company at distributor prices in the United States a 10 cubic foot refrigerator and then deducted the excise tax in the United States, which is 10 per cent, as you know, and then added the exchange, and then paid the duty and then added the sales tax and then the excise tax, which we must do in the Canadian market, and then add, say, \$6 or \$8 for freight, and then add a reasonable gross margin for ourselves, and a dealer margin—that is in common practice in the trade today both in the United States and in Canada—that refrigerator would sell in Canada for \$580.

Mr. HARKNESS: What does it sell for in Canada?

Mr. Butters: Well, it does not come in. I am just giving you an illustration.

Mr. HARKNESS: What is the similar refrigerator that you sell in Canada? What does it sell for?

Mr. Butters: \$499, roughly half a cubic foot smaller, but we also make that refrigerator in a stripped model at \$439, but then, again, you have to get down to details, for instance, there are shelves in the model we make here which are not in the American model. That costs more money to make. You have to take all these factors into consideration.

The CHAIRMAN: Can you return to your questioning later, Mr. Harkness?

Mr. Harkness: I still really have not had any answer as to why there are these differences. I would like some definite information as to why there are these considerable differences in the prices.

The CHAIRMAN: Can we have one of the questions drafted by the steering committee with counsel and the Combines Commissioner for submission to the manufacturers who are to come back here later?

Mr. HARKNESS: I am just wondering if any of these gentlemen here can answer that question now.

Mr. SIMPSON: It is owing mainly to the fact that the output of the manufacturing plants in Canada is possibly only one-tenth of that produced in the United States. Tooling costs are expensive and if they can be amortized over a large volume it is a lesser factor in the cost. On top of that you have to consider we have a 10 per cent sales tax here and a 15 per cent excise tax pyramided on top of that.

The CHAIRMAN: Not pyramided, Mr. Simpson. It is on the same base. Mr. Carter, you may question.

By Mr. Carter:

- Q. You mentioned this morning, I think, that when a consumer buys an article, an electrical appliance, he buys not only the article but the servicing of the article. Is that right?—A. He has to give the service necessary to maintain that article during a five year guarantee period. In other words, part of the mark-up that he gets he has to spend out during that five year period, if that item requires service, to keep it in operation.
- Q. So that the servicing, then, is intimately connected with the guarantee offered by the manufacturer to the consumer. Is that right?—A. That is correct.

- Q. And that guarantee is to cover the possibility of trouble to the consumer; it is an obligation on the part of the manufacturer arising out of imperfections in the workmanship or the material in that article. Is that right?—A. Yes, but he does that through his retailer. He does not directly service these things himself. Of course he will service it himself if in the meantime that retailer has gone out of business and the consumer comes back to him asking him to service it.
- Q. Yes, but the guarantee itself is an obligation to the consumer to correct any imperfections in the manufacture of that article.—A. That is correct. The guarantee is made by the manufacturer that the product will stand up under service.
- Q. Well, then, if that is so, should not then the manufacturer be expected to support and bear the cost resulting from such defects instead of passing that on to the consumer?—A. He does, Mr. Carter. You make it on the oranges or you make it on the bananas. Whether he allows the retailer sufficient margin to take care of the cost of that service, or whether he services the thing directly and raised his price to take care of that cost himself, would make no difference.
- Q. But why do you include that in the maintained price? That is the important thing. Why should you include that in the maintained price of the article?—A. Because the retailer has the duty of servicing that article and he has gone out of business and the consumer comes back to him asking him to service it.
- Q. Should the manufacturer himself not bear that cost?—A. If he raised his price in the first instance to take care of that cost instead of putting it on the mark-up to the retailer—you have to get it one place or the other.
- Q. On page 4 you mention the increase in the labour index since 1939. Can you tell me what percentage of the manufacturing cost is represented by labour, roughly?—A. I have not that figure, but I think it would be a very high content.
 - Q. Have any of you gentlemen such a figure?

Mr. Longestaff: The cost of everything is the result of labour.

Mr. CARTER: When you manufacture an article there is in it the cost of labour and the cost of materials.

Mr. Longestaff: The material in the original instance was labour. Everything is the result of labour.

Mr. CARTER: That is not my question, Mr. Chairman. My question is when an article is manufactured what per cent of the cost of manufacturing that article is represented by labour.

Mr. Longestaff: Everything.

Hon. Mr. Garson: If the questioner is going to be confined to a 10 minute period I think he should ask the question and get a reasonable response, without interruptions.

The WITNESS: We have no figures that would give that, but I would hazard a guess that 75 per cent of it is labour. Mr. Butters thinks that estimate is high and would correct it.

By Mr. Carter:

Q. Could the gentleman give us his idea?

Mr. Butters: That would depend whether you mean direct or indirect labour.

Q. Direct labour.—A. You mean in the entire operation in a plant what amount of the cost of the product is represented by labour?

96459 - 3

Q. That is right.—A. I am only hazarding a guess without looking up statistics on that point. I am not a production man, but I would say it is in the vicinity of 45 per cent, it depends again of course on what you are talking about—I am talking refrigerators—if you are referring to refrigerators I still think my figure is close to being correct.

The Chairman: Mr. Carter was asking Mr. Simpson, as I understand it, not for labour costs going back to the cost of extracting raw materials, but, rather, he is confining himself to the plant, what percentage of cost in your plant is attributable to labour?

Mr. Butters: I would rather look it up if it is important. It would be somewhere in that vicinity, and then, again, I was not taking into consideration that the motor is made in another one of our plants, so there is labour again. It would probably, if I analysed it, be closer to 45 per cent.

Mr. CARTER: It would be under 50 per cent in any case?

Mr. Butters: I would say it would be.

Mr. CARTER: Can you tell me what percentage of the costs would be represented by capital invested normally?

Mr. Butters: I do not think that that question, as such, could be possibly answered, Mr. Carter. It would depend on capital invested.

Mr. Carter: Can you tell me, then, what percentage of capital investment is normally invested in re-tooling improvements for new models, etc?

The CHAIRMAN: Mr. Carter, in fairness to these gentlemen, one is the manager of the association and the other are with the sales agencies. I think that is a technical question that could be directed to a cost accountant of these companies rather than these gentlemen.

By Mr. Carter:

- Q. Well, the cost of unemployment insurance, pension schemes, etc., that is all counted as part of labour, is that right? It is all counted as part of the cost of manufacture?—A. Very definitely, yes.
- Q. On page 3 you mentioned some prices here of refrigerators, etc. Company A and Company B. Are those Canadian prices or American prices?

 —A. They are Canadian prices.
- Q. Are they wholesale prices or retail prices?—A. They are established list prices. I think I made that statement previously.
 - Q. I am sorry. I did not quite get that.

The CHAIRMAN: Your last question, Mr. Carter.

By Mr. Carter:

- Q. Can you tell me what bearing your comparisons for clothing and food, etc., has on the increase in electrical appliances?—A. What bearing that has on the increase in electrical appliances?
- Q. Yes, on the increase in costs. You mention it as one of your arguments here.—A. The increase in labour and material would have a very great effect on the cost of electrical appliances, but the comparisons were not made for that reason, they were made because electrical appliances are resale price maintained items and those other comparisons in general which we have made are not resale price maintained.
- Q. Does it necessarily follow that if they had been price maintained that there would be comparative increases in food, clothing, etc. Does it necessarily follow?—A. Not necessarily, but it is possible.

The CHAIRMAN: Mr. Mott, will you question?

By Mr. Mott:

- Q. Most of the questions I was going to ask, Mr. Chairman, have been answered, but I understand you to say, Mr. Simpson, that 15 per cent of the electrical manufacturing capacity is devoted to electrical appliances as compared to about 85 per cent on heavy equipment.—A. That was an approximation, yes.
- Q. Now, I also want to ask you a question regarding this Company A. You say that the price increased \$15 on a refrigerator only, at the same time you mentioned that materials, such as steel or other metal, have gone up 100 per cent, and I also presume that labour has had a terrific increase in the ten years? What increase would labour represent in the cost of manufacture?—A. I have not got it in ten years, Mr. Mott, but the index for labour, which was that given by the Dominion Bureau of Statistics, equalled 100 in 1941, is now 286, indicating a 186 per cent increase since 1941; in labour.
- Q. Well, we will take 186 per cent increase. In other words, it is your mass production that enables you to keep the prices of your refrigerators at what they are today?—A. That is correct.
- Q. It is a result of mass production. Now, they are a resale price maintained product?—A. In most cases, but not in all cases.
- Q. You also mentioned that most of the factories, or quite a few of them, have warehouses which are probably filled up. You cannot get clear of that particular product or other electrical appliances at the present time?—A. That is correct. They are not moving.
- Q. Well, would you say that if the resale price, even if it were maintained, even if it were maintained on a lower level, low enough even to offset the taxes put on commodities in the last two years or so, and the dealers were thus able to sell more of them today, would that not have an effect in your mass production to give you a greater margin, a fairer margin? You maintain that it is through mass production that you have been able to keep the price down. You would be able to keep the price down if you could continue manufacturing. On the other hand, you are not able to keep the price down if you are not manufacturing. Now, if the resale price was lowered so that all these refrigerators could be cleared out of the warehouses, that would allow you to continue to manufacture on a mass production basis, which would have the effect of keeping prices down as low as you have them at now, or lower. The whole theory is that you have been able to keep the prices down through the use of mass production methods, and the more you sell, the cheaper you can manufacture them for. Now, if the retailer could only clear them out would there not be a tendency for you to continue to manufacture them at a lower rate?—A. I agree with everything you said up to your last point, but the fact of the matter is that the market will not absorb these appliances at the present time due to consumer credit restrictions, sales tax and excise tax, and also the fact that the cost-ofliving index has increased 20 in the last year.

The CHAIRMAN: 20 per cent?

The WITNESS: 20 points, I mean. There is not just enough money in the average person's pocket to buy the things he wants and, consequently, whether or not they will it, there is a consumer's resistance set up at the present time to purchasing anything. I do not know what has caused that tremendous drop in sales since April. I have my own ideas on the subject, which I have just given, but I could be wrong. The point of the fact is that the market today is not there. You feel, do you, that if we just went on producing them at an abnormally high rate, flooding the market with these things, that they would be taken up merely to get the cost down on them.

By Mr. Mott:

Q. No, but I do feel this . . .—A. If they were still not absorbed you would be faced with a terrific loss.

Q. One of the reasons they are able to sell so cheaply in the United States is, I think, the fact that they have there a population of 120,000,000, a greater field, and that they can turn them out by mass production methods. I do not think there is a resistance on the part of buyers such as you mention, because I think that there is still a good average of employment and a very good average wage to meet the cost of living as it has gone up, in the large industries, at least. I was thinking, if you followed that right straight through, that the consumer could get them at a lower price through your industry being able to continue to produce them by mass production methods, which you maintain is the reason for the small increase in manufacturing cost.

Mr. Mott: There is no doubt about it, where the warehouses are filled—and there is no reason to doubt that the warehouses are filled—is it not better to be able to get them to the public, to the consumer, and to sell them, than to have them standing on the floor?

The WITNESS: Not at a loss. Mr. Mott: No, not at a loss.

The WITNESS: I see your point, I am sorry. I think this is something that we should not argue about too long because the same conditions prevail in the United States that prevail in Canada; witness the fact that in spite of shortages of materials appliance manufacturers in the States—under the defence programme they have advance orders to take up that slack—from them we have imported into Canada something like 100,000 refrigerators in nine months (Jan.-Sept.) supposedly in face of the fact that appliance manufacturers could not get materials to produce; so you can see that there was a very high inventory over there, or in their hands, of which they could not dispose.

Mr. Mott: That is fine. The other question I wanted to ask you was in regard to dealers; is there any discrimination—and I use that term advisedly—between appliance dealers; let us assume the dealer has the same type of electrical appliance and he has a store at this corner and there is a dealer just around the corner who has a store which was closed out; as I understand it he cannot buy any of the, let us say, bankrupt stock of the dealer who is closed out? Is that so?

The WITNESS: Let me put it this way, Mr. Mott; and I don't know—I am only speaking personally now. I would say that any manufacturer is limited in the number of dealers that he can support by his production. In other words that he does not want three dealers in one block along the street. In the first place, he cannot sell goods on that basis and it would only add to the cost of putting the article on the market. Does that answer your question?

Mr. Mott: Yes, it certainly does. In other words the wholesale distributor decides the number of outlets and I presume it would depend on location, how far away from the outlet dealer he was, and the conditions which you mentioned in your brief.

The WITNESS: May I have Mr. Kennedy answer that question for you?

Mr. Kennedy: I would like to attempt to answer the last part of your last question. I would not like the inference to be left that the location of the appliance dealer is the important thing. There are many appliance dealers in a non-satisfactory location who have turned out to be better appliance dealers than men who have had a glory front store, just sitting there waiting for the business to come in. I would not like the feeling to be left with this committee that dealers are appointed by virtue of their location. They are

appointed the same as other business people are, for their intelligence, their aggressiveness, their credit responsibility, their standing in the community and so on.

The CHAIRMAN: Mr. Welbourn.

Mr. Welbourn: The question I had in mind has already been answered Mr. Chairman, thank you.

Mr. THATCHER: I should like to pursue a question asked by Mr. Mott—as to the desirability of price-cuts in the appliance field to increase sales. First of all Mr. Simpson in this business, is it usual to take tradeins?

The WITNESS: Yes.

Mr. THATCHER: Does your association have any idea of the proportion of retail appliance sales which have tradeins? Would you say the number would be substantial or otherwise?

Mr. Kennedy: If you could refer to major appliances for the moment, such as electrical refrigerators and electric ranges.

Mr. Thatcher: I would like your answer to include washing machines, radios, and other such items.

Mr. Kennedy: I cannot answer your questions including radios because I am not in the radio business.

Mr. THATCHER: Please answer then, leaving out radios.

Mr. Kennedy: One person's opinion in the industry is that as of today, due largely to consumer credit and high taxes, that in at least 75-80 per cent of the individual homes which are buying major appliances today you have a trade-in and the retailer must absorb the trade-in.

Mr. THATCHER: Is it usual in your industry for a company to tell the dealer what he may or may not give for a tradein?

Mr. Kennedy: Again, sir, I must speak for one company and not the industry; that is not the usual practice.

Mr. THATCHER: So that from your experience in the appliance field today there is real competition, even though goods may be price maintained. The competition comes from the value respective dealers are prepared to allow for the trade-in.

Mr. Kennedy: If it is of interest, sir, in answering your question, having been twenty-six years in the appliance business I can safely say that competition at the retail level is higher today that it has even been in that twenty-six year period.

Mr. THATCHER: From your own experience would you not say the value of trade-in goods, in the present period of difficulty, has gone up very substantially, and because of this fact, the real price to the consumer for these various appliances, even though price maintained, has gone down sharply?

Mr. KENNEDY: I would agree with that.

By Mr. Thatcher:

Q. Now, I would like to get you, Mr. Simpson, to comment on the period since 1945 in so far as prices are concerned. You told us earlier that since the new taxes—supply of most articles has been very plentiful. Before that time however would you agree that frequently supplies were tight and difficult?—A. There was a very large backlog of consumer demand up until approximately a year ago—in so far as my knowledge takes me. There was expanded production encouraged by the government trying to overcome the dollar shortage. They increased the Canadian content in these appliances in order to save U.S. dollars, and most manufacturers expanded their plants.

Q. Am I correct in saying—and I am sorry to rush you but I only have ten minutes—that from 1945 to 1950 many dealers in Canada, in fact nearly all dealers in Canada, had great difficulty in obtaining all the appliances they wanted—particularly those made from steel?—A. That is correct in the major appliance field.

Hon. Mr. Beaubien (Joint Chairman): And there was no trade-in in those days.

By Mr. Thatcher:

- Q. In periods of shortage I suppose you would agree that it is normal for prices to go up?—A. It very definitely would be.
- Q. You have maintained that the price on electrical products did not go up as rapidly in this period as did other goods. Would you say the fact that appliances were price maintained over this period of shortages actually kept prices down in many localities?—A. Very definitely. It prevented the retailer from selling beyond the price at which it was marked. As a matter of fact, I mentioned before that on one occasion a franchise was taken away from a dealer for selling over the price at which the manufacturer intimated his goods should be sold.
- Q. In other words, resale price maintenance as far as appliances are concerned, in the period of shortages from 1949 to 1950, has meant that the consumer purchased at lower prices than otherwise might have been the case?—A. I feel that very definitely.
- Q. You stated a moment ago that 45 to 50 per cent of your costs are represented by labour?—A. Mr. Butters stated that—directly or indirectly.
 - Q. Is it true that most of that labour would be unionized?—A. It would be.
- Q. One brief suggested that employees like to sell their services at a uniform figure—in other words they like to market their product—labour—in an orderly way, that is through a trade union? Do the workers in the electrical industry take such an attitude?—A. I think so.
- Q. You do not blame them for such a desire?—A. No, I do not think they can be penalized for that.
- Q. Does your association see a parallel between the desire of trade unions to market their services in an orderly way, and of farm organizations to market their products in an orderly way, and your own request for the retention of price mantenance, so that your products may be marketed in the same fashion.

 —A. I would say that in this democracy we are at least entitled to the same privilege they are.

Mr. MacInnis: Well, may I ask a question?

Mr. THATCHER: I will just be a minute.

By Mr. Thatcher:

- Q. Then you feel that your organization, in asking for orderly marketing by resale price maintenance, is only asking in principle for the same thing that labour and farm organizations are asking for their products?—A. I think that is so.
- Q. And you would also feel that if the government should prevent "price maintenance" in one field, they probably in fairness, would be obliged to prevent it in others?—A. I think that naturally follows from your argument.
 - Q. Very well.

The CHAIRMAN: Please note that the witness said that it "followed from your argument", not that he necessarily believes it.

By Mr. MacInnis:

Q. When there is a difference of opinion on wages, how is the wage arrived at? When there is a difference of opinion between the organized worker and an industry, and the management as to what the wage should be, how is it arrived at?—A. I do not know anything about the industrial relations of my companies. I would say that they are individual problems within the companies themselves, and I would have no knowledge of them.

Q. But supposing I say that the way in which it is arrived at is by means of a conciliation board appointed by the government. Would you agree that that was the usual procedure?—A. No, I do not know the answer to that.

Q. You do not know. Well, do any of the other gentlemen who are here

with you today know the answer to that?

Mr. Longestaff: Mr. Chairman, might I say that the answer to Mr. MacInnis' specific question is "no!"

Mr. MacInnis: How is the conciliation board appointed?

Mr. Longestaff: I would say that most disputes between labour and management are not settled by conciliation boards.

Mr. MacInnis: But I want to know about cases where the employers and the organizations do not agree.

Mr. Longestaff: They usually do agree.

The CHAIRMAN: Please answer the question which was asked, Mr. Longestaff.

Mr. MacInnis: Would the manufacturers agree to have their prices set in some such way as wages are settled by government appointed conciliation boards, let us say, by a government appointed prices board?

Mr. Longestaff: The business of price maintenance comes about by logic because the distributor wants so much money; and if you try to sell your product in any other way, the dealer will not handle your product. I have to sell my product in the best way I can sell it in order to get the most business for my factory. You are assuming that it is all done by some mysterious method known as price maintenance. I have to accept that, because that is the purpose of this committee. But we know that the distributor wants to get a certain discount and he will not handle our products unless he gets it.

Mr. MacInnis: I am not dealing with that question.

Mr. Longestaff: We have to put our product into the hands of the people in the best way we can.

The CHAIRMAN: You are a long way from the question which Mr. MacInnis asked you.

Mr. MacInnis: I am not necessarily opposed to price maintenance; but if there is going to be price maintenance, I do not think it should be done by private individuals. I do not think that the enforcement of price maintenance should be a private matter between private individuals.

The WITNESS: Oh, so you are recommending government control of business?

Mr. MacInnis: If there is going to be enforcement of price maintenance, that enforcement involves a code of private law from which there is no appeal to the courts-

The CHAIRMAN: It is now 1:00 o'clock, gentlemen, and we decided to cut off our discussions at 1:00 o'clock. What is the wish of the committee now so far as procedure is concerned?

Mr. THATCHER: Mr. Chairman, I think we should have these gentlemen back again, because a lot of us are not finished yet.

Mr. Fulton: I think we should formulate the questions in the steering committee and find out from them if they could immediately return with the answers.

The CHAIRMAN: If our steering committee and counsel and the Combines Commissioner can agree on the questions, we will get together and find out when we can have them return. I think we will be able to give them a little more notice than today.

Mr. F. R. Hume: Some of the gentlemen here are on their way to meetings at New York, so if you would give us a little notice we could get them together again.

The CHAIRMAN: The steering committee will meet at 3.30.

The committee adjourned.

APPENDIX A

CEMA

Canadian Electrical Manufacturers Association 126 Davenport Road (at Belmont), Toronto 5, Canada

Telephone Midway 1139

November 21, 1951

TO:

The Joint Committee, both Houses of Parliament to consider the Interim Report of the MacQuarrie Committee on Price Maintenance.

Gentlemen:

The Board of Directors of the Canadian Electrical Manufacturers Association welcome the opportunity of filing representations with your committee and submits herewith its view on "Resale Price Maintenance."

Composition of the Canadian Electrical Manufacturers Association.

The Canadian Electrical Manufacturers Association was formed in the year 1944 by a group of forward-looking executives in the Industry, and now has a membership of one hundred and forty-five member companies. The actual production of the Electrical Manufacturing Industry is in the neighbourhood of 580 millions of dollars, according to the last report of the Dominion Bureau of Statistics. The industry directly employs approximately 60,000 persons. The member companies in the Association represent about ninety per cent of the dollar turnover in the Industry.

The objects of the Association are to promote and further the interests of manufacturers of electrical products; to stimulate the interest of the public in the manufacturing, engineering, safety, transportation and other problems of the Electrical Industry and to this end, among other things:

- (a) to increase the amount of electrical service to the public and to improve the quality of this service;
- (b) to promote the standardization of electrical products;
- (c) to collect information relating to the Electrical Industry and to disseminate such information to the members of the Association and to the public;
- (d) to appear for the members of the Association before and to cooperate with legislative committees, governmental departments and agencies and other bodies in regard to matters affecting the industry; and
- (e) to promote a spirit of co-operation among the members of the Association in the attainment of improved production, enlarged distribution and increased efficiency in the use of electrical products.

This submission is presented in the name of the Board of Directors of the Association which was duly elected at its annual meeting held in September, 1951.

"Resale Price Maintenance"

Referring to the Interim Report of the MacQuarrie Committee to study Combines Legislation, dated October 1, it may be stated that while the manufacturers themselves are not directly concerned with the subject of "Resale

Price Maintenance", they are concerned for the welfare of their distributor organizations and retail outlets, and for the well-being of a system of merchandising goods which has received wide public acceptance over a long period of years.

"Resale Price Maintenance" is merely a recognition of the right of a manufacturer of a particular product to establish the price at which it will be sold to the public. It is not an agreement between competitors to keep prices up, neither is "Resale Price Maintenance" related to profits large or small, but as stated only to the merchandising of standard products in a manner which has been overwhelmingly endorsed by consumers all over this Continent.

Manufacturers are naturally interested in the successful operation of a business, as employers of labour for the well-being of their employees, and in their responsibility to shareholders. Successful operation of a business means that the economy is healthy, if not, everyone suffers. Manufacturers are most successful when they sell the largest possible number of satisfactory products at prices which show them a reasonable profit, and which the public can pay. If the profit is unreasonable or the product is not satisfactory this objective will not be attained. It has been established that the responsibility for a product does not end at the factory door, and in order to maintain quality and reputation it is also necessary for the manufacturer to take a direct interest in the satisfactory operation of the product after it is sold.

We believe the growth of "Resale Price Maintenance" coincides with and is a result of the acceptance of this responsibility by manufacturers. The most satisfactory method of ensuring that the manufacturers' responsibility to the consumer will be carried out by the distributive trade, is for the manufacturer to exercise some control over the prices at which his products will be sold, also the methods of distribution and the necessary service required. The benefits of this method of distribution are:

- 1. Most consumer products manufactured by the Electrical Industry are highly technical and their successful use requires instruction in operation and skilled maintenance. These products are bought at infrequent intervals and the reputation of the manufacturer is largely dependent on the length of successful service which they give. It is, therefore, necessary for the manufacturer to ensure that properly equipped and qualified dealers, who will remain in business, handle his products so that the public will receive value for its money. Value in this case does not mean first cost alone, but length of time the articles give satisfactory service when related to first cost. Clearly it is a false bargain to purchase an electrical appliance at a low price if it fails in service, and for which it is impossible to obtain parts or service. To a lesser degree this is equally true if such parts and service are not readily available. In the sale of these products the lowest cost dealer is not necessarily the most efficient since the public derives the greatest benefits from the dealer who sells at a reasonable price and then gives the most efficient service. manufacturer suggests a price which will provide this service and must have the right to refuse to sell through dealers who do not recognize this responsibility.
- 2. A manufacturer who accepts responsibility for his goods in the hands of the public cannot be indifferent to the terms on which his goods are sold. No reasonable person would suggest that a manufacturer should be forced to continue to supply a dealer who fails to pay his account. The injury to the manufacturer and to the public is even greater when a dealer deliberately adopts a policy of predatory price cutting and refuses to accept responsibility for properly servicing the manufacturers' goods.

- 3. The benefits of mass production by individual manufacturers can only be realized if the manufacturer is assured that his goods will be distributed in an orderly manner. To accomplish this he must exercise some control over the prices at which they will be sold. If the benefits of planned mass production are lost by erratic market conditions the price to the consumer will soon far exceed any temporary bargains he may have secured, since the manufacturer will be unable to maintain the quality, continuity of production, and service of his products.
- 4. In the efficient distribution of products the manufacturer must sell and deliver in large quantities to distributors and dealers thereby using their storage facilities. The distributive trade must be assured of a reasonable profit or they would buy from day to day thereby increasing costs with resulting higher prices to the consumer.
- 5. When commencing the manufacture of new products it is customary for a manufacturer to make exhaustive market surveys to ascertain the demand for the product, and the quality standards and price at which his product will receive the greatest possible public acceptance. It is necessary that he informs the public of this price, otherwise his plans will be defeated, and the public will suffer because dealers may charge too high a price for the new product which will restrict its distribution.
- 6. The fact that consumers have not suffered because of the suggested "Resale Prices" in the Electrical Manufacturing Industry, but have undoubtedly benefited thereby, may be illustrated by the following examples which have been furnished by member companies having products on the market today, which are comparable to those marketed in 1939, but which, since that date, naturally incorporate improvements in design, convenience and operation.

Example 1—Company "A" In 1939 sold a 6 cu. ft. Electric Refrigerator for \$284.50. The published price for this Refrigerator in June of 1950 was \$299.75. It is interesting to note that except for the added increment due to the application of Excise Tax on April 10th, 1951, the price of this Refrigerator would still remain at \$299.75—an increase of \$15.25 only.

If the price of this Refrigerator had followed the increase in the cost of Food, it would not sell at \$299.75 but at the equivalent price of \$710.40.

If it had followed the increase in the price of Clothing it would not sell at \$299.75 but rather at \$608.26.

If it had followed the increase in the index for labour within the Electrical Industry, as quoted by the Dominion Bureau of Statistics, it would not sell at \$299.75 but at aproximately \$860.00.

If it had followed the increase in the price of Ferrous and Non-Ferrous Metals, as given by the Dominion Bureau of Statistics, it would not sell at \$299.75 but at approximately \$680.00.

Example 2—Company "B" In 1939 Company Member "B" marketed a 7.9 cu. ft. refrigerator with a suggested list price of \$319.00—today Company "B's" 8 cu. ft. refrigerator has a suggested list price of \$399.00. Eliminating, however, the amount of increase caused by the application of the excise tax in April of 1951, this refrigerator would sell today at \$342.00, which it will be noted is only a 7% increase over 1939 prices.

In 1939 this same Member Company marketed a Washing Machine with a suggested list price of \$127.00—Today this Washer sells at a suggested list of \$184.50, but if the special excise tax is eliminated, the present day price would be \$154.50, which it will be noted is only an increase of $21 \cdot 6\%$ over the 1939 prices.

Example 3—Company "C" This Company in 1939 marketed a Washing Machine at a suggested list price of \$144.50, which today sells at \$189.50. Eliminating, however, the special excise tax, this machine would sell at \$151.70, which it will be noted is an increase of only 26%.

It is not possible for Company "C" to give direct comparisons in regard to refrigerator models, because of a complete change in design and in capacity. On a basis of cubic foot capacity, however, this Company states that in 1939 it cost \$40.00 per cubic foot to produce and sell their refrigerator, but that if special taxes are eliminated, their cost of production today would be only \$42.30 per cubic foot. On a cubic foot basis, therefore, this is only a cost increase of 5.7% approximately.

The above examples are only a few of those which could be given, but are considered to be sufficient in number, since in general all would conform to the same pattern.

In evaluating the above noted percent increases in prices, it should be appreciated that there have been major increases in labour and material costs since 1939.

Average weekly earnings in durable goods manufacturing increased from \$24.28 in 1939 to \$55.30 in August of this year, an indicated increase of $127 \cdot 7\%$. However, a much more relevant index insofar as this Industry is concerned, is the index based upon average hourly earnings in the Heavy Electrical Machinery and Equipment Industry, as published by the Dominion Bureau of Statistics in "Man Hours and Hourly Earnings". As of August 1951 this index stood at 286 (1941=100) indicating a 186% increase since 1941.

The most relevant material index for this Industry is the Wholesale Combined Index for Iron and Non-Ferrous Metals (Table 5—Dominion Bureau of Statistics Prices and Price Indexes) which indicates an increase of 127.9 per cent over 1935-9 averages.

In the face of these increases in both labour and materials, the Electrical Manufacturing Industry's completely unrecognized achievement in keeping down prices may be contrasted with other Industries in which "Resale Price Maintenance" has not been a factor. Clothing and Food are both good examples of such commodities, and the indices of these Industries on a percentage basis of comparison with 1939 prices now stand at 213.8 per cent and 249.7 per cent respectively as quoted by the Dominion Bureau of Statistics, October 1st, 1951.

It is felt that these examples provide the most factual answer which this Association can give to the most significant question formulated by the MacQuarrie Committee in its Interim Report, in suggesting standards by which "Resale Price Maintenance" should be judged and which reads as follows:

"Does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices?"

It is submitted also that there is ample evidence in these illustrations to show that "Resale Price Maintenance" does not discourage economic efficiency as has been stated in the Interim Report of the MacQuarrie Committee.

- 7. In periods of declining prices the publication of suggested "Resale Prices" by the manufacturer prevents dealers from continuing to sell to the public at the former higher prices.
- 8. Prices of an individual manufacturer's product would vary in different localities, largely dependent upon whether there was more than one dealer in his products. In small communities served by only one dealer, prices would tend to increase out of line with larger communities where there were a number of dealers.

- 9. Large department and chain stores have complete control over the "Resale Price" of their private brands. Small dealers are entitled to similar control on national brands. It would be most unfair if price cutting should only occur on products handled by dealers whose volume is already too small to justify having their own private brands. The fact that they can successfully compete with the private brands of department and chain stores indicates that the "Resale Prices" of national brands are not too high.
- 10. "Resale Price Maintenance" tends to prevent peaks and valleys in the whole economic structure, eliminates lay-offs and stabilizes employment. If peaks and valleys could be controlled depressions would be eliminated.
- 11. This Association agrees with that portion of the Interim Report of the MacQuarrie Committee dated October 1st, 1951, dealing with the "loss-leader" device, and submits that "Resale Price Maintenance" is the most effective, if not the only method, of preventing this abuse.
- 12. Since the greater part of the MacQuarrie Committee Interim Report obviously refers to technical products or consumer durables of the type manufactured by members of this Association, it is important that the peculiar problem involved in the manufacture and distribution of products of this nature be brought to the attention of the Joint Committee.

These so-called products are for the most part "deferrable products" in the sense that potential purchasers may delay buying them for an indefinite period. The demand for such products therefore fluctuates violently over the course of the business cycle. When business is high and consumer expectations rise, or shortages seem likely to occur, or a special tax seems imminent, the demand for such "deferrable products" is increased at a much more rapid rate than in the case of those other products which the customer consumer cannot postpone buying. When consumer incomes are reduced, or when it is expected that incomes will be reduced, or excessive taxes are imposed, the demand for these "deferrable products" is lowered with extreme severity. Consequently, the demand for raw materials, labour, and capital employed in the production of such goods is subject to wide and sudden variations. It is also important to recognize the fact that the capacity to produce "deferrable products" is frequently inadequate to the effective demand; and under adverse marketing conditions that the capacity available for producing such goods is also greatly in excess of demand.

These fluctuations while they vary in severity are not at all unusual. The Industry experienced a minor recession in 1949 and is now in one of much more serious proportions. Between these recurring recessions, as previously mentioned, there are boom periods accompanied by shortages, when it is self-evident that "Resale Price Maintenance" protects the interests of the consumer by established and nationally advertised prices. However important this particular benefit is to the consumer, it is quite superficial to the far more fundamental one of forcing a high degree of efficiency on the manufacturer in order to survive. This high efficiency has been proved herein by the relatively lower increase in the prices of such commodities, when compared to other goods and services which have not been subject to "Resale Price Maintenance."

All the foregoing is submitted after careful study by a special Committee appointed by the Board of Directors. We have approached the subject with

the hope that the material contained herein may be helpful to you in solving the problem under discussion; and will further your Committee's efforts in assisting to suggest legislation which is satisfactory both from the view point of the consuming public and Industry as a whole.

Respectfully submitted on behalf of the Board of Directors,

B. NAPIER SIMPSON, General Manager.





HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament 1951

CAIXY 2 -51 C54

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE No. 7

TUESDAY, NOVEMBER 27, 1951

WITNESSES:

Mr. Percy R. Bengough, President, and Mr. L. E. Wismer, Director of Public Relations and Research, Trades and Labor Congress of Canada.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951



MINUTES OF PROCEEDINGS

Tuesday, November 27, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Golding, Horner, Lambert, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (Oxford), McLean (Huron-Perth), Roberge, Shaw, Stuart (Charlotte), Thatcher, Welbourn.

In attendance: Mr. Percy R. Bengough, President, and Mr. L. E. Wismer, Director, Public Relations and Research, Trades and Labor Congress of Canada.

The presiding Chairman presented the Third Report of the Sub-Committee on Agenda and Procedure which is as follows:

Your Sub-Committee on Agenda and Procedure met on November 26 and has agreed to recommend:

- 1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3.
- 2. That the Canadian Retail Federation, who are to come before the Committee again on Friday, November 29, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish to supplement their briefs.
- 3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs.
- 4. That notwithstanding any previous decision as to the hours of sitting, the Committee sit on Wednesday, November 28, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

Mr. Croll moved that the first, second and third recommendations of the Sub-Committee be concurred in.

Mr. Fulton moved in amendment thereto:

That for the purpose of enabling the Committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, Committee Counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the Committee (as individuals or through their Association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:

- (1) the factory cost
- (2) the price to the distributor
- (3) the price to the retailer
- (4) the price to the ultimate purchaser

for price-maintained and non-maintained goods of comparable category and quality;

and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing the figures be given with the omission of the appropriate stages outlined above; and that Counsel be empowered to employ a cost accountant as and when

necessary for the purpose of such study.

After discussion and the question having been put on the said amendment, it was negatived on the following division:

Yeas: The Honourable Senators Aseltine and Horner. Mrs. Fairclough, Messrs, Fleming Fulton, Harkness, Hees, Murray (Oxford), Thatcher.

Nays: The Honourable Senators Beaubien, Burchill, Golding, Lambert, Vaillancourt. Messrs., Beaudry, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Jutras, MacInnis, Mott, McLean (Huron-Perth), Roberge, Shaw, Stuart (Charlotte), Welbourn.

And the question having been put on the motion of Mr. Croll, it was resolved in the affirmative, on division.

On motion of Mr. Croll, the fourth recommendation of the sub-committee was concurred in.

Mr. Wismer was called, tabled a brief on behalf of the Trades and Labor Congress of Canada, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Mr. Bengough was called and questioned.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Wednesday, November 28, at 3.30 o'clock p.m.

A. L. BURGESS, Clerk of the Committee.

EVIDENCE

NOVEMBER 27, 1951 10.30 a.m.

The CHAIRMAN: The committee will come to order. Yesterday afternoon the Steering Committee met for almost three hours and there is the following report to be made:

- 1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3rd.
- 2. That the Canadian Retail Federation, who are to come before the Committee again on Friday, November 29th, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.
- 3. That all questioning of witnesses in future be confined to the arguments advanced in their briefs.

At the moment I will break off and mention No. 4 a little later. You will recall that yesterday morning the committee asked the Steering Committee to meet with counsel and the Combines Commissioner to decide on just what figures and facts could be usefully produced which would help us in our deliberations. We had a very long discussion of that in the Steering Committee, especially on the question of costs. We had the benefit of the advice of the Commissioner of Combines and, I may say with all appreciation, of Mrs. Fairclough, who is an accountant, on the actual difficulty of defining the kind of costs we wanted. The Combines Commissioner pointed out that any selected group which we picked out would barely touch the field. After quite a long discussion, the question was brought to a head by a motion which brought into focus the two different points of view on the conduct of this committee, which I had expressed earlier; first of all, whether the committee is to conduct a full blown inquiry into every aspect of resale price maintenance, in other words, to duplicate the work of the MacQuarrie Committee, or whether this committee is a result of the requests of certain groups, retailers and manufacturers, who had asked the government for a further opportunity to present their views against the prohibition of resale price maintenance after the government had announced its acceptance of the MacQuarrie Committee findings and announced that it intended to introduce legislation. A motion was introduced, therefore, which cleared the air and put it up to a straight vote. The motion was that the committee hire a cost accountant and this cost accountant, in conjunction with our counsel and the Combines Commissioner, make an examination of all the factors entering into the selling price to the consumer on resale price maintained goods and on non-resale price maintained goods. That motion was defeated. Of course, the Steering Committee is only an advisory committee and the decision will have to be made here, be it either approval or rejection. If approved here the situation would be that the onus would be on these groups who come before us, these groups who have asked the committee to appear, to establish that the findings of the MacQuarrie Committee are not in accordance with the facts. After all, the briefs they submit are their considered opinion on this matter—the heart of their argument—and their coming before us for questioning is for the purpose of allowing other members of this committee who want further information on any of the points

made in their briefs an opportunity of cross-examining them. Now, that is the story offhand. These are the first three points: first of all, that the Canadian Electrical Manufacturers Association be recalled—we were not through with them, so they were going to be recalled anyhow—secondly, and this is a clause which is a consequence of our discussion, that the Canadian Retail Federation were to come before the committee again on Friday, November 29, and that the Canadian Electrical Manufacturers Association be given an opportunity to produce such figures in relation to costs, mark-ups, etc., as they may wish to supplement their briefs, and thirdly that all questioning of witnesses in future be confined to the arguments advanced in their briefs.

I might point out this one other thing: it was the opinion of the combines commissioner that a committee of thirty-eight parliamentarians would never finish the job. As long as we said we could dig up more figures, income tax, cost—whatever costs you want—the only way we could actually complete our

work was the second approach.

The fourth point in this report has to do with the appearance of Mr. MacGregor before this committee.

Mr. Fulton: I have an amendment to the report.

Mr. CROLL: Hadn't we better move the motion first?

The CHAIRMAN: Let us separate the first three recommendations, if someone will move the first three.

Mr. CROLL: I move that the first three items be adopted.

The CHAIRMAN: Mr. Croll moves that items 1, 2 and 3 be adopted.

Mr. Fulton: I have an amendment to move, and in speaking to it, I would like to point out that one of the effects of the steering committee's report, if adopted, will be to reverse a decision of this committee.

Mr. CARROLL: Which item?

Mr. Fulton: I think it is item 2 of the steering committee's report. It will reverse a decision arrived at by this committee, a unanimous decision of the committee yesterday morning, that we should formulate and direct to all these witnesses who are in the manufacturing or distributing business a set of questions with respect to their costs and mark-ups at the various stages in the distribution process which would enable this committee to arrive at its own conclusion on that aspect of the price maintenance system, which concerns itself with the question of whether or not price maintenance is in the interests of the consumer or against the interests of the consumer, by either decreasing or increasing the price the consumer has to pay for goods.

It was a unanimous decision of the committee yesterday that we would formulate a set of questions designed to produce information to enable us to

make up our minds on that point.

Mr. Jutras: There was no unanimous decision.

The CHAIRMAN: I will get the actual motion.

Mr. Fulton: I am not concerned with the legal niceties, but that was certainly the effect of yesterday morning's discussion. On Friday, of course, the committee had previously come to a similar decision when it was generally accepted without a vote that such an inquiry should be made and would enable us to shorten our work considerably and arrive at a decision.

Now, I regret I have to say it, but I see in this an attempt to limit the time we are going to be allowed to pursue this inquiry, and a very definite attempt by the government to indicate to the committee, through the chairman, just what line our inquiry should take; and in fact if this motion carries it will succeed in reversing the committee's decision and so confining the scope of

our inquiry that we will not be able to arrive at any sound conclusion but will merely be a rubber stamp for the MacQuarrie Committee and be a means by which the government can evade its responsibilities and say: we had a parliamentary committee, and they endorsed the MacQuarrie report. I for one refuse to endorse the MacQuarrie Committee's report unless we are placed in possession of the facts and figures which will enable us to arrive at a sound conclusion as to whether or not the MacQuarrie recommendations are correct. I make the point, and I have maintained it previously and I am not going into all the arguments again, that unless we follow our own line of inquiry as and when necessary, and certainly all the inquiries we have had so far indicate it will be necessary to have figures produced, we will not be able to arrive at that sound conclusion.

Furthermore, evidence given to the committee by at least two witnesses indicates clearly that the MacQuarrie Committee itself did not place itself in possession of the necessary facts and figures upon which it could base a sound conclusion. We have had two of the most important witnesses, the Retail Merchants' Federation and the Electrical Manufacturers' Association witnesses, both tell us that they were not asked to nor did they submit to the MacQuarrie Committee any facts and figures to accompany their representations to that body. It was nothing more or less than an expression of opinion before them, and apparently that is all we are going to have in this committee. If all we are to do is repeat the processes of the MacQuarrie committee simply to find out how many of these individuals, associations or manufacturers are in favour of price maintenance and how many are against it, and decide on the basis of those opinions, you don't need a committee to do that, all you need is an adding machine; and that apparently is what the government wants to turn this committee into, a combination of adding machine and rubber stamp and I am not going to lend myself to that process. I therefore move:

That, for the purpose of enabling the committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, committee counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the committee (as individuals or through their association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:

- (1) the factory cost
- (2) the price to the distributor
- (3) the price to the retailer
- (4) the price to the ultimate purchaser

for price-maintained and non-maintained goods of comparable category and quality;

and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing, the figures be given with the omission of the appropriate stages outlined above;

and that counsel be empowered to employ a cost accountant as and when necessary for the purpose of such study.

The CHAIRMAN: I will accept that as an amendment to clauses 2 and 3. As far as clause 1 is concerned we can accept that as that just suggests the matter of an organization coming back for further hearing. I will accept this motion which you are now putting before the committee as an amendment to the motion moved by Mr. Croll that clauses 2 and 3 of this report of the steering committee be adopted.

Mr. Fulton: May I just conclude, Mr. Chairman?

The CHAIRMAN: Certainly, Mr. Fulton.

Mr. Fulton: I want to point out that we have made a decision on this motion twice already. The steering committee met on Thursday, and I think you will recall, Mr. Chairman, that we decided in the steering committee that it would be preferable, and that we would be justified, in taking the time necessary to pursue this line of inquiry, and that it would help us to make up our minds intelligently on the issue of price maintenance. Friday morning you broached the issue in committee and it was obvious that there had been a change in your sentiments. On Friday morning, as reported in the committee's proceedings at page 241, you put forward the opposite point of view which was different from the position you took in the steering committee, for you then said that we would not be justified in pursuing this line of inquiry. The committee on Friday did not accept your view; and we then decided to pose certain questions along the lines which I have incorporated in my amendment. Yesterday morning the committee again confirmed the decision that we should pursue our own line of inquiry and where witnesses did not produce facts and figures which we felt they should produce to enable us to make decisions we should require them to produce them. Now, however, the steering committee under your guidance reversed that decision yesterday afternoon, with the result that we now have the report before us which you have read, and to which I have moved this motion as an amendment. I am not given to using strong language, but I want to make it perfectly clear that in my view this is an attempt to render this committee quite useless. The result would be to place us in the position where we cannot arrive at any intelligent decision on price maintenance or on the legislation placed before us; and I resent this obvious attempt by the government to dictate the course of the committee's proceedings and to reverse decisions that we have previously arrived at.

The CHAIRMAN: As far as the committee is concerned, and as far as certain references which Mr. Fulton has made concerning government dictation are concerned and as far as the members of the steering committee and I are concerned, I would like to point out that on three separate occasions we have raised this point: in which direction is this committee going to go? We did so without any hope of success and might I say that one of the main reasons for our having the Combines Commissioner before us yesterday afternoon in the steering committee was to have him outline, from his knowledge, what was involved in such a procedure as has been suggested by Mr. Fulton and, if we did get those facts and figures, what conclusion we could draw from them.

As you know, the steering committee is composed of members of all parties, and it was certainly not with the sole support of the government members yesterday afternoon, after having heard the Combines Commissioner and counsel, that the committee came to that conclusion. Mr. MacInnis of the C.C.F. party and Mr. Shaw of the Social Credit party were present and they heard the entire discussion and the reasons upon which we based our decisions.

To my mind the crux of the matter, after hearing from the people who have had some real experience with ascertaining facts such as those and then interpreting them, is that a parliamentary committee, such as ours, of 38 members, operating in a field as intricate and widespread as the retailing field, could sit here for 10 years and have figures produced before them without end. It gets back to the fact that the only real reason this committee is sitting today is that the manufacturers and the retailers protested to the government, when the government announced its intention, having accepted the report of the MacQuarrie Commission, to implement that report by legislation. They asked for a further chance to state their case to show that resale price maintenance was a good thing, and that the findings of the MacQuarrie committee

were wrong. So my job as chairman is to try to get this committee to work as expeditiously as possible.

Mr. Jutras: On a point of order, Mr. Chairman, I think Mr. Fulton raised the suggestion that this decision was arrived at by the committee unanimously. I know, speaking for myself, that I never could see any point in this, and I certainly did not support it. That is one of the disadvantages of our procedure here. It is difficult for us to get the floor to speak when something is brought forward. I was very anxious to speak when Mr. Hees brought this matter up, but before I could get the floor a suggestion had been made that this should be referred to the steering committee so I let it go by default, as it were, and it was sent to the steering committee. Therefore, I suggest the committee did not sound the opinions of us all.

Mr. Fulton: Oh, we took a vote on it, Mr. Chairman.

Mr. Jutras: No. There was no vote taken on it.

Mr. Hees: There were no dissenting voices.

Mr. Jutras: My understanding was that a decision was to be taken by the steering committee as to what was to be done. I could never see any point in that suggestion at all because I think that if we just consider for one moment what this does, it is in fact trying to bring about either a benefit or otherwise to the public. But this is one thing which, in the bread case, and in the match case, and in all the other cases which have come before the courts, the courts could never decide upon.

Mr. Fulton: Mr. Chairman, on the point of order raised by Mr. Jutras, whether or not there has been a previous decision, let me say that the printed copy of our proceedings yesterday is not yet available, but I have looked over the typewritten transcript and it appears to substantiate my recollection that I moved a motion yesterday that the steering committee, as I recall it, should discuss this matter with counsel and formulate a set of questions to be directed to all those who appear before us as witnesses, requiring them to produce facts and figures which would enable us to arrive at a decision. That was the motion placed before the committee as I recall it, and it was unanimously adopted. I do not think we even had a division on it.

The steering committee was instructed to formulate a set of questions; not to consider whether or not we should ask those questions. The main committee yesterday said to the steering committee: you get busy and work out a set of questions, because we want to get the facts and figures to enable us to make up our minds. On your point of order, therefore the record shows there was a decision taken yesterday.

Mr. Shaw: May I ask Mr. Fulton if he can tell the committee why the steering committee did not formulate a set of questions?

Mr. Fulton: I think I can give you the reasons. It appears to be felt by the majority of the steering committee, in accordance with the chairman's remarks, that we should not take the time to pursue this line of inquiry. The motives behind that reasoning I do not know, but I suspect—with respect to some members of the committee that they did not want facts and figures brought out—because they are concerned lest the facts and figures show this whole thing is just hocus-pocus, to deceive the public about the cost of living.

Mr. Beaudry: On a point of order, Mr. Chairman, I do not think it is permissible for Mr. Fulton to attribute motives to any member of the committee.

Mr. Fulton: I was asked to give reasons.

Mr. Beaudry: But reasons and motives are vastly different.

Mr. Shaw: Pursuing my question, may I ask if the time factor was the only factor which entered into our discussion?

Mr. Fulton: If I am under examination, I have no objection to answering the question. It was fully realized by the steering committee, and I realize too, that it would be extremely difficult to formulate a set of questions which will actually be guaranteed to produce the information we want. That difficulty, while realized, does not mean that it could not be done. That was the reason for the suggestion that we employ a cost accountant. I do not think that anyone on the steering committee, either the members of the steering committee or the experts assisting us, ever took the position that it would be impossible. They did tell us it would be difficult and it would be quite lengthy, true; but they never said it would be impossible.

The Chairman: That is one reason why I felt all along that we should have made more use of our opportunity to draw on the experience of the Combines Commissioner than we have. He certainly was very helpful to us yesterday, and that was the first point which he had. He established to most members of the steering committee what a tremendous task it would be to have figures with any reality to them. The second point was, that after having obtained the figures in a year or two, what would be their significance.

Mr. Shaw: The thing that disturbed me the most was that in our consideration of this question it became apparent we would have to go far beyond the field which we were instructed to investigate. We would have to become a prices committee. That is the thing that disturbed me and motivated me in the position I took.

Mr. Beaudry: May I speak on Mr. Fulton's point?

The CHAIRMAN: Mr. Carroll is first. Mr. Hees: Did I not apply to speak?

Mr. BEAUDRY: I am speaking on the amendment.

The CHAIRMAN: Mr. Hees, I thought you were referring to the witnesses?

Mr. Hees: No. I knew this thing was coming up. The Chairman: Mr. Carroll and then Mr. Hees.

Mr. Carroll: My observations are going to be very brief. I think in considering this amendment to the resolution brought in we have to go to the reasons why this committee was appointed.

Personally, I may say if I had had any voice in the appointment of this

committee that I would have said: No, we do not need any committee.

However, in the good judgment of the government, as a result of the objections of certain manufacturers and retail men who asked to come before this committee to give reasons why the MacQuarrie committee report and recommendations were wrong and would not be helpful to the consumers of this country, they were given that opportunity.

So far as I can see, if they wanted to show that the MacQuarrie committee report was wrong they should have produced information to show that on their own figures this enquiry was not enhancing or correcting the cost of living in this country. To date they have not produced one figure to indicate that. Whether or not they have produced any arguments against the MacQuarrie committee report is for the committee to decide. I am in agreement with my friend who said that we should not be rubber stamps in this thing, and I want to assure him that I am no more a rubber stamp in this matter than he is, and I am just as independent a member of this parliament as you can find within the confines of Canada. I say that the various organizations should be given the opportunity of going ahead with their arguments, if you will, but one member of that organization said yesterday it was impossible to show the costs, impossible! I think he was a member of the organization that came before us yesterday. I did not agree with him of course, but that is one of the things that they should have brought in here, that the various organizations

should have brought here to show that this resale price maintenance is not enhancing the cost of living in this country. Now, so far as the evidence that was adduced before the MacQuarrie Committee is concerned, my friend said that those people were not given the opportunity of producing evidence or that they did not produce evidence. That was not the fault of the MacQuarrie Committee. They had the opportunity of producing evidence if they wanted it there, and they had the same opportunity yesterday. Now, I do not know what evidence was before the MacQuarrie Committee that led them to that conclusion that this resale price maintenance practice was contributing to a greater cost of living in this country than should exist, I do not know that, and I do not know if there is any member of this committee that knows that or not.

Hon. Mr. ASELTINE: That's what we are trying to find out.

Mr. HEES: And we will not find it out this way.

Mr. Carroll: No, we are not here for the purpose of trying to find out what evidence was before the MacQuarrie Committee. What we are here for is to ascertain whether or not the organizations who come before us are showing in their evidence that the MacQuarrie Committee came to a wrong conclusion.

Mr. Fleming: In the light of the statements made by Mr. Carroll, may I ask where does he find a statement to warrant such a conclusion in the terms of reference to this committee.

Mr. Carroll: The conclusion I came to was the statement made in the House by the Minister of Justice on the formation of this committee.

Mr. Fleming: Listen to the terms of reference to this committee—"that the Senate do unite with the House of Commons in the appointment of a joint committee of both houses of parliament to consider the interim report of the committee appointed to study combines legislation". It is not a case of accepting the report of the MacQuarrie Committee. We are appointed to consider the report.

The CHAIRMAN: Everyone of us here is a parliamentarian. This is not a court of law. Everyone here knows what this committee is set up to do.

Mr. HEES: If we are to be denied access to all the figures that we believe we should have to make our decision in this important case, then we are going to have to make our decision on the MacQuarrie report. I think it is impossible to base our decision on that report, because I believe that the conclusions of that report were the result of a completely inadequate examination of the facts in the case. This committee on Friday agreed that only by a presentation of comparative figures showing the profit margins on both resale price maintained goods and on goods which are not resale price maintained can a worthwhile opinion be formed as to whether resale price maintenance is in the public interest or against it. The MacQuarrie report, on which the government bases its proposed legislation dealing with resale price maintenance, contains no comparative figures whatsoever, but is, in effect, a theoretical discussion of a problem which can only be decided, as the committee agreed on Friday, on comparative figures. These comparative figures are available. Mr. Harris, of the Canadian Retail Federation, said on Friday that he would produce figures in the course of the next few days. Mr. Simpson, of the Canadian Electrical Manufacturers Association, is to return shortly with figures showing manufacturers' margins. They do not see any difficulty in this. I have talked to them both afterwards; they see no difficulty in producing these figures, figures which we agreed on Friday are necessary to prove this case one way or the other.

During the past three days it has been stated by witnesses appearing before this committee that they were never asked to submit comparative figures to

the MacQuarrie Committee. As I understand it, the people who were asked to submit evidence were simply asked to give their opinions, and in doing that they did not know that this kind of inquiry was going to develop later. I suggest that Mr. Justice MacQuarrie be asked to appear before this committee and explain why these figures were never asked for, and how he came to the conclusion that resale price maintenance is against public interest, a conclusion on which the government should base such vitally important legislation, a report which contains nothing but theory. That requires a great deal of explanation, I believe. Perhaps Mr. Justice MacQuarrie can help the government to that extent. I sincerely ask that he be asked to come before this committee so that we can find out on what basis his committee came to the conclusion that resale price maintenance was not in the public interest, because to arrive at a proper decision in this committee we have to know the basis on which we are asked to make this important decision. This concerns a large number of people in the retail business in Canada. This is not something that we can pass off lightly by saying "You have heard the evidence, let us pass the legislation". You cannot deal with the amount of business that is concerned in this matter in a lighthearted way. This is vitally important to a great section of Canadian business and I say we have to give it a thorough examination; we should examine all the facts we have before us, and I think Mr. Justice MacQuarrie should be asked to come before us and explain his position. weeks will not be sufficient to complete the work of this committee, but even if it takes another three months to come to a right decision, it is worthwhile, because if we do come to a wrong decision it will be a terrible wrong to a large number of business people in this country.

Mr. BEAUDRY: I am speaking on Mr. Fulton's amendment, Mr. Chairman, not on Mr. Hees' speech. Mr. Fulton suggests by his amendment that this committee procure from manufacturers and retailers appearing before the committee figures showing the following stages of the distributive process, the factory costs, the price to the distributor, the price to the retailer, the price to the ultimate purchasers of all price maintained and non price maintained goods of comparable category or quality. I would suggest that, if we are to do a thorough and conclusive job on this, we definitely would need an adding machine because the conclusive proof would only be arrived at by determining if there is a vast or considerable difference between one group and the other group, and I do not think that we can set up some goods of comparative equality as standards, because the standards or conclusions that we might arrive at from a group would not necessarily be conclusive for another group, or for all groups. I would, further, state again on this amendment, that perhaps a review of the history of prices investigations is not ill-placed at this moment. In 1948 the House of Commons appointed a committee to deal with prices. Many members who are sitting on this committee sat on that committee. held, and I am subject to correction on this, some 168 sittings and studied, in part, the question of resale price maintenance. I will be pleased to submit this afternoon from the record of the Prices Committee of 1948 that the question was found of relatively little importance by this committee in so far as its effect on prices was concerned, but, in any case, after the Prices Committee had sat for 160-odd times the whole matter was referred to a Royal Commission on Prices, which in turn dealt very thoroughly with the factory costs, the price to the distributor, the price to the retailer and the price to the ultimate consumer, and dealt with it at a very considerable length over a long period of time, and eventually brought out a report stating in fact, if not in these words, that while it had investigated very thoroughly the question of prices, there was one small aspect in which it thought it had not explored far enough, and which it recommended to the government that it be gone into further by some

body to be decided upon by the government, to weigh the question of resale price maintenance, and following that report the government then appointed the MacQuarrie Committee to specifically study the question of resale price maintenance. Now we have reached the stage in that long series of historical events dealing with prices where in turn a group of Canadians have represented to the government that they cannot agree with the report of the MacQuarrie Committee, and the government in turn has said, "Perhaps, indeed, there should be further representations from the gentlemen interested in trade, and for that purpose we will set up a committee which will deal with, as is stated in the terms of reference, consider the interim report of the MacQuarrie Committee". Now, I suggest that unless we want to be thoroughly ludicrous we are not going to start repeating the whole process over again and re-beginning the Prices Inquiry which concludes in this small phase now, because if we follow through with this amendment, in fact we will be re-beginning and redoing the work that the Prices Committee did in 1948 plus, naturally, all the normal extensions, going through the royal commission, the MacQuarrie Committee and this committee, and none of us will be members of parliament long enough to eventually see the final reports. I submit that the amendment should be defeated.

Mr. Thatcher: I am a small retailer, Mr. Chairman, and I am rather disturbed by several aspects of this motion. Rightly or wrongly, I think every retailer in Canada is in court today, and I feel they are being treated like criminals. I listened to Mr. Carroll who argued that these people should come before this committee and prove their case. I am not a lawyer, but I think a fundamental principle of British law is—

Mr. CARROLL: To prove that the MacQuarrie Committee report was wrong, not to prove their case.

Mr. Thatcher: —I think that a fundamental principle of British law, is that a man is innocent until he is proven guilty. The government, in effect, has said that resale price maintenance is not in the public interest. Surely under British law it is up to the government to prove their contention. They certainly have not done it so far. On the contrary I have not seen one figure here to show that the practice is detrimental. The original motion says in effect, to every small retailer in Canada, "You must come before us and prove that price maintenance is not harmful". Such a demand is absolutely contrary to the principles of Canadian justice, if I understand law correctly.

The CHAIRMAN: Let everybody listen without interruption.

Mr. Thatcher: Surely fairness demands, that if the government maintains that the practice is harmful, they must bear the onus of proof. We have been told by the Minister of Justice and others that the MacQuarrie Committee has already proved that it is not in the public interest yet in the next breath the minister refused to make available to us the information on which they based their conclusions. I think there is only one way for us to arrive at a sensible decision, and that is to compare mark-ups on price maintained goods and on non-price maintained goods Therefore I am going to support this amendment. If the government does not want to make a farce of this committee they will accept it.

Mr. HARKNESS: I think we are in a situation that was very well summed up in the brief that we were to consider today, that of the Trades and Labor Congress, where it shows on page 4:

Whatever the committee had in the way of information before it about the extent of the practice of resale price fixing, it certainly didn't present your committee or any other interested party with any concrete evidence on which to base a case either for or against resale price maintenance.

Now, I think that is the situation at the present time. There has been no concrete evidence on which to base a decision as to whether resale price maintenance is good or not, and until we have that evidence I do not think we can turn in anything in the nature of a reasonable report. Now, that statement is not my statement, it is the statement of a body which has come here to give evidence against resale price maintenance, but, in any event, I think that there is no question that until we have some concrete evidence on the matter nobody in Canada knows whether resale price maintenance is working against the public interest or whether it is in the public interest. The MacQuarrie Committee report certainly does not give us any concrete evidence on this matter it merely makes a statement and that is all. And, therefore, as I say, I think we should follow the procedure which was decided upon yesterday, that of calling witnesses to secure evidence in regard to what the margins are on the price maintained goods and on non-price maintained goods, and try and get some concrete figures to show what the situation actually is. Therefore I would support Mr. Fulton's amendment.

Mrs. FAIRCLOUGH: It was said earlier this morning that it was because this question was so intricate that the recommendation came forth from the steering committee, and it is for that very reason, Mr. Chairman, that I support this amendment. After all, criticism was levelled at witnesses both in this committee and in the steering committee for their failure to supply statistical information, but any statistical information is useless unless it is understood. There is an old saying that "figures do not lie but liars can figure". Unless we are going to have available expert advice on the interpretation of these figures, it is useless to ask for them. I believe we should have the figures and, in addition we should have the expert advice on the interpretation of these figures. The point on which the steering committee broke down yesterday was on the difference of opinion as to what figures should be asked for, they could not decide on whether they wanted factory costs or prices to the first distributor, or any costs or figures in between these two-I should not say extremespositions. The committee more or less threw up its hands and said "We do not know what to ask for", but I still maintain that if legal counsel and the combines commissioner had met with an accountant who understands costing, they would have produced the proper questions in very short order. I do not think that this committee can rise unless it has established whether or not it is in the public interest to abolish resale price maintenance or to permit it, because there are far too many things that are dependent upon the even, equitable, and profitable distribution of consumer goods in this country, and most important are the jobs of our people, and if you are going to have a spotty distribution, and spotty manufacturing as a result, we are consequently going to have no continuity in jobs, and that, in my opinion, is the most important thing we have to decide on. Unless it is eventually proven that resale price maintenance is wrong and works to the detriment of the ultimate consumer, then I cannot support the report of the MacQuarrie Committee, but right at the moment I believe the only way to proceed along these lines is to adopt the amendment which has been put forward by Mr. Fulton.

Mr. Macinnis: Mr. Chairman, I am rather amazed and somewhat disturbed at the seeming value that people in this committee put on figures. I suggest to the committee there is more than figures involved in this matter. There is a very definite principle involved and that principle is—and we cannot tell at the moment just what effect it may have later on—to allow the economy of the country to get into the hands and to be controlled by a small group of people who are responsible to no one but themselves. That is what you have. Who makes the maintained products? The manufacturers. Who enforces the maintained prices? The manufacturers. Has anyone else outside of the manufacturers any say in the matter at all? Now, it seems to me that is the question,

and it is not necessarily the question of whether or not at the moment it does not adversely affect the consumer. It might for a time indeed be in favour of the consumer. Take a combine; a combine works for a while in favour of the consumer by reducing prices until it gets control and then it raises prices and squeezes the consumer. You are in the very same position here; as Mrs. Fairclough says, figures are no good unless we understand the figures, and I just say I do not see the understanding in this committee that will understand the mass of figures we would have put before us if this amendment is going to carry. I am grey headed already, but the youngest person here would be grey headed, even my friend Mr. Fulton, before we could get through this mass of figures and make a reasoned and logical report on the figures put before us. It is just an impossible task.

It has been stated the MacQuarrie Committee did not ask the manufacturers and retailers for factual information. Well, surely that is an amazing assertion. These people were to appear before the MacQuarrie Committee, which was making an investigation. Now, what do you suppose the MacQuarrie Committee would think a witness appearing before that committee would put before it? What would a lawyer taking a witness to court expect that witness to say in court? He would expect evidence that would prove the case either one way or the other. These people were appearing before the committee to prove price maintenance was not bad even if it was not a good thing.

Then on the basis of the evidence the MacQuarrie Committee received, and it came from these people, they came to the conclusion that price maintenance was a bad thing and so recommended to the government. Now, we were asked to review, as it were, the MacQuarrie report and suggest amendments to the Combines Investigation Act. If we are to make amendments surely we are to make those amendments after we have discussed the whole thing because if we do not find price maintenance is a bad thing we do not make amendments at all.

I suggest to you Mr. Chairman, there is a whole lot more here than this mass of figures. There is a definite principle as to who is going to control the economy of this country. If economy is going to be controlled, in my opinion it should be controlled by people responsible to the consumers and not by people who benefit through price control.

Mr. Beaudry: On a point of order, Mr. MacInnis states we are here, I hope I understood him correctly and if not will you please correct me, but I believe he stated we are here to determine a principle which might disturb the whole economy of the country, that is, resale price maintenance.

I would point out that in the testimony we have before us it has been established, I believe, and disputed by no one that price maintenance affects approximately 15 per cent of goods sold in this country on dollar volume and I submit on that score we are not dealing with a problem which will disturb of necessity the economy of Canada at large.

The second point by Mr. MacInnis is that the manufacturer, under present conditions, is the only controller of Canadian economy, and I would refer Mr. MacInnis to page 277 of the record to a question put to Mr. Harris of the Retail Federation of Canada, or a series of questions which place the matter in a vastly different light.

Mr. MacInnis has, in my humble opinion, made two statements of fact which do not agree with the facts.

The CHAIRMAN: At this stage each person is in turn to state his views.

Mr. Macinnis: I am sorry if I am the only person here who has made statements that do not agree with the facts. I congratulate the other members on their intelligence, but the point that Mr. Beaudry seems to have overlooked, and

he overlooks it because he has a static mind, is that there may be 15 per cent today but if one set of manufacturers find it is a good thing, what will it be tomorrow, what will it be ten years from now?

Mr. HARKNESS: On a point of order.

Some Hon. MEMBERS: On a point of order.

The CHAIRMAN: Let us have a point of order which is a point of order.

Mr. HARKNESS: We are discussing now the desirability or undesirability of getting further evidence.

The CHAIRMAN: We are actually discussing the amendment Mr. Fulton has made to clauses 2 and 3 of the report.

Mr. Harkness: I think the last two or three speakers instead of discussing that have been discusing the pros and cons of resale price maintenance, which I maintain, as far as this point is concerned, is out of order.

The CHAIRMAN: I think each speaker, at least up to this interjection, has more or less kept to the thought expressed in the report of the steering committee or the amendment of Mr. Fulton. I think the way to get on is to let each member state his case.

Mr. Fleming: Mr. Chairman, I think if the report of the steering committee is adopted this committee will have completely stultified itself and I think it will have offended some very elementary principles of justice and fair play, to which I think we should give more than lip service in parliament. These statements made this morning by Mr. Carroll and Mr. Beaudry and one or two others, and yourself, Mr. Chairman if they have any validity at all should have been offered in the House. I do not think this committee is the place now to undo what both houses of parliament clearly did, and it seems to me if we follow the reasoning of Mr. Carroll that is precisely what the steering committee asks this committee to do now.

The terms of reference of this committee are perfectly clear and there is no room for any misunderstanding of them. Here are the words:

That the Senate do unite with the House of Commons in the appointment of a joint committee of both houses of parliament to consider the interim report of the committee appointed to study combines legislation, tabled in the Senate Tuesday, November 6, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

That is based on a consideration of that report and further down we are given power to examine witnesses under oath. And for what purpose? Of course it is for the purpose of considering the report. The House of Commons and Senate did not say to this committee that this question is generally pre-judged, and you are simply to hear such adverse comments on the report as interested people care to make and you will require such persons to give chapter and verse for their statements. That in substance is the argument addressed to the committee this morning by Mr. Carroll supported by Mr. Beaudry. If this subject was pre-judged before the committee was set up it is just a hollow farce to sit here at all. If this committee was appointed for a serious purpose it was for the purpose of conducting an intelligent and thorough study of that report to determine for ourselves as judges, appointed by the people of Canada, whether the conclusions in that report are sound or unsound. We do not arrive at a decision as to whether these recommendations are sound simply by accepting opinions from here or there. We should not simply say to some group "You are suspect because the case is pre-judged and you have the burden of proof against you before you ever come here." I do not think that is the situation at all. That would surely offend against any proper conception of our duty as members of parliament. Certainly what we were sent here by both houses to do was to get the facts, consider the evidence and arrive at our

decision. As competent judges appointed by the people as to resale price maintenance we have to decide whether it is against public interest or in favour of public interest, and this committee will not have discharged its duty, it will not have carried out the reference given it by both houses of parliament unless it gets at the facts.

Now, why hesitate about this? Some have said it is too big a job. Well, if it is too big a job then I suggest we had better examine again our sense of responsibility as members of parliament. It would be a fine travesty of a sense of parliamentary responsibility if we were to go back to parliament and say, "We didn't do half a job, we did about one-tenth of a job because the job is too big." I would hate to be in that position, and I do not think the members of the committee want to be in that position. We should search out the facts and we will not have any intelligent opinion unless we get at those facts.

The MacQuarrie report catalogues a lot of opinions. It does not give essential facts and if it had facts before it then I think this committee ought to have the same facts, but we have not been given them. We are simply working at the moment within the four corners of the report which is a catalogue of opinions. I do not think mere opinions are good enough for a parliamentary committee to proceed on. I understood the whole purpose of setting up the committee is to get at the facts so that as judges we can determine whether the opinions are supported by the facts. I think the facts are available if we make up our minds to go out and get them. There is not a member of this committee, I say with all respect, who is competent to judge this question simply on scattered opinions from various sources. We will be competent to form an intelligent decision on this question if we get at the facts. It is not difficult for members of parliament to form an opinion if they are given the facts, but if we merely have a lot of opinions then I do not think we can have a report that will do justice to it.

Mr. Beaudry speaks of the Prices Committee of 1948. I shared with him the unhappy experience of sitting through the long sittings of that committee. He argues we should not seek conclusive proof. There is his argument against the parliament of Canada seeking conclusive proof. Surely we are not going to shut our eyes to what may be evidence. Should we not look for evidence? Should we shut our minds to evidence and simply take some opinions which may or may not be based on facts?

Mr. Beaudry: I did not state that this committee should not seek conclusive proof. I said that this committee should not seek conclusive proof of something proven to my knowledge by two different bodies in the process of investigation.

Mr. FLEMING: If this question has been pre-judged why have a committee set up at all? If we are in the position of having something pre-judged before it ever comes before us it is a hollow farce we are engaged in here. I do not think the members of the committee want to be a party to that. Is the plain language of the reference to this committee to be reversed, is the situation to be completely reversed on the argument of Mr. Carroll that the question is pre-judged?

Mr. CARROLL: I never said it was pre-judged.

Mr. FLEMING: The hon. member did not say it was pre-judged, but the clear effect of his argument is that it is pre-judged. He says we are only here to listen to those opposed to the MacQuarrie report and if they come and bring before us facts and figures we will listen to them, but not otherwise.

Now, Mr. Chairman, is the Minister of Justice going to say to this committee—

Hon. Mr. GARSON: I will say something if I get a chance here.

Mr. Fleming: —that it should not be undertaking an intelligent effort to get at the facts of the situation, because if he does I think he is trying to undo something parliament clearly directed this committee to do and he is simply inviting this committee to make a farce of parliamentary procedure.

Hon. Mr. GARSON: I wonder if I may be permitted to reply to my hon. friend's rather lengthy question and get down to the facts in this matter. In order to deal with the issues which have been raised in any basic way I am afraid I would have to, perhaps for the third or fourth time, review what actually took place in this matter.

To begin with, statements have been made, which in my opinion are quite inaccurate, to the effect that this or that evidence was given before the MacQuarrie Committee. The MacQuarrie Committee, as is on record, when it opened up its proceedings decided upon grounds for which good support can be found in logic, that it would reach a wiser decision if it received its views in confidence.

Anyone who has examined the experiences in resale price maintenance in the United States knows there have been examples in that country where powerful manufacturing companies, who were not anxious to sell their products by resale price maintenance, attempted to maintain a free market for their products. They were brought to their knees by the combined retail trade and had to make a public apology, at their own expense in advertisements, and contributed in one case \$25,000 to the organized retailers campaign for resale price maintenance in that country.

It would be an entirely reasonable assumption that the reception by the MacQuarrie Committee of views in confidence would likely produce from people who might be otherwise afraid of the consequences which would be visited on them, much more accurate information. At any rate, the Committee decided to receive those views in confidence.

I put it to the members of this committee there have been one or perhaps two witnesses only who have undertaken to say that they themselves did not submit any figures, although they have no knowledge of what other people submitted. I do suggest, Mr. Chairman, if they did not submit any figures there was nothing in the invitation sent out by the MacQuarrie Committee which prevented them from doing so. This is what the MacQuarrie Committee said to these various bodies who were invited:

For its assistance in this study the committee is anxious to receive as soon as possible from organizations, firms and individuals whatever views they may wish to express upon matters within its terms of reference.

There was nothing whatsoever that prevented them from presenting figures to the MacQuarrie Committee.

Apart from the statements of these two particular witnesses in relation to their own business we have no information here at all as to whether or not there may have been volumes of statistics produced before the MacQuarrie Committee.

Mr. Chairman, lest we fall under the heavy fulminations of my honorable friend from Eglinton and his colleagues in the Conservative party about our intellectual incompetence and under statements that we should never dare reach conclusions on resale price maintenance unless we have a lot of statistics to support them, I have here a statement by the Board of Trade of Great Britain, which is a statement of policy by Sir Hartley Shawcross shortly before the recent elections in that country.

Mr. FLEMING: He is not making them now.

Hon. Mr. Garson: If my friend will contain himself for a minute, I have here also a debate in the House of Commons on a resolution by one of the Labour members, supported by another Labour member, and I may say supported by a number of members of the Conservative party; and they were able to reach conclusions on resale price maintenance without having a lot of statistics; so if we here are to fall under criticism we at least have the satisfaction of knowing that although we are criticized by distinguished people in this country we are not in too unhappy company, as Sir Hartley Shawcross is by no means a moron.

Now, it is true what the terms of reference are, as has been stated by the honorable member for Eglinton—that is the reference of the MacQuarrie report to this committee—I suggest to him that it would be very difficult indeed to frame these terms of reference in language which would instruct the committee exactly what it should do. At any rate what was done in this particular case was that in moving the resolution in the House I went to what I think were great pains, but for all the benefit it produced on some of the members of the House I might have saved my time. However, I went to very great pains to state just exactly what the position was in relation to this resolution. This is what I said:

The MacQuarrie Committee has reached its conclusions and has made its recommendations which are—as honorable members who have read this report know—of a most specific character. The MacQuarrie Committee has recommended in effect that the practice of resale price maintenance should be prohibited. Now, therefore, there is a specific and concrete proposal upon the record.

In the light this specific and concrete proposal the government has been strongly urged, by many individual merchants and manufacturers and by the executives of several representative industry or trade associations, to afford them an opportunity to present their views to the government or to a parliamentary committee. The government has decided that it ought to accede to this request but that it is preferable from many standpoints that this presentation of views should take place before a joint parliamentary committee open to the public and to the press of Canada in such a way as to make the information which is presented there available to all concerned, including all the members of this House. The joint committee will therefore be directed to consider the MacQuarrie Committee's interim report and to consider appropriate amendments to the Combines Investigation Act based thereon.

Then I went on to say further:

It is the hope and the expectation of the government that this joint parliamentary committee will get its work under way at the earliest possible moment and will proceed with sufficient dispatch to enable the appropriate legislation it is set up to consider to be dealt with by parliament before the end of this session as forecast in the Speech from the Throne.

Now, I would like to know how it is possible in the English language to put the position in more plain terms than those which were used. We have stated in the Speech from the Throne we had accepted the MacQuarrie report upon the basis of a much broader investigation than appears to have been the basis of this document here that was brought into the British House. Supposing we had not had any previous inquiry at all but as a matter of government policy had brought that policy down and had introduced it. That would be quite properly within our constitutional powers; because remember we not only had the MacQuarrie report but we had supplementing it and illuminating

it the advice of the Combines Investigation branch, which as it happens has been engaged in this enterprise for over a quarter of a century and in that

time has accumulated a certain amount of competence in the field.

Now, we said we were submitting it to this committee simply in order that the committee might consider the MacQuarrie report to make sure that these men who were objecting to it could not bring forward some strong and cogent reason as to why we should reconsider the matter and not act upon that report. In doing that we were not being unreasonable. Every one of those organizations had been before the MacQuarrie Committee over a period of months, and had had all kinds of opportunity to prepare its case; and all that it needed to do was come in before us and repeat what it had previously said with whatever interpolations or additions it might see fit to introduce. Then we can decide whether the MacQuarrie committee report is so utterly unreasonable that we should reverse the statement of policy which we have made in the speech from the throne, tear up the MacQuarrie committee report, and start all over again.

This is not a case at all of people being held to be guilty before they have been proven to be so. This is simply a case of where the MacQuarrie committee gave the fullest possible opportunity with no limitations of any kind at all to these organizations to present their case; and having heard the cases for and against the committee reached a judgment which seems to be a reasonable one—one which the government has accepted and announced as policy. Then, out of an abundance of caution the whole purpose of this committee is to see whether or not perhaps the people concerned could show that the report was in some respects defective.

Now, what do we find when we listen to these representations—and in this I am in agreement with Mr. Hees and I have already said so. They come up here, if I may adopt his language, with a long statement of generalities that really mean nothing. You cannot put your hand into their arguments and get

anything tangible to touch.

Now, whose fault is that? Is that the fault of this committee? There is nothing to prevent these gentlemen whose business is so vitally affected as some members have said, from submitting their figures to the MacQuarrie committee—there is nothing to prevent them submitting their figures here. But why, until they have shown that there is something wrong with this report, should this committee start on a great inquiry that cannot be made in less than a year.

Some Hon. MEMBERS: Oh, oh.

Hon. Mr. Garson: I must contend that if my honourable friend embarks upon the field that he is proposing to embark upon he is doing exactly that. The chairman has said that is what the Combines commissioner told the steering committee yesterday. I do not know about the exact period of time but it would be a very long period of time; and, in this matter, with all deference I am inclined to accept those views as against my honourable friend's.

Mr. Fleming: We sat on the Prices Committee in 1948 with a far bigger question and we brought in a report in four and half months with all those meetings Mr. Beaudry speaks of.

Hon. Mr. GARSON: I wonder if my honourable friend knows how long it took the Federal Trade Commission in the United States to consider to make a report on this very thing? If he did he would not make his statement.

Mr. FLEMING: I am concerned with Canadian evidence not British evidence nor American evidence.

Hon. Mr. GARSON: My honourable friend will find, no matter whether he is considering British evidence, American evidence, or Canadian evidence, that the problem of resale price maintenance is pretty much the same in its main

outlines in all three of those countries. If those very capable men in those other countries were not able to do it in a short time, with all his wisdom he is not

likely to be able to do it in this country.

Now the situation, I think, is this. Up to the present time, speaking only for myself and not for other members of the committee, I must say that no evidence has so far emerged from the deliberations of this committee which would lead me to suppose for one single moment that the MacQuarrie Report was incorrect. It may be that other evidence will be submitted, but until it is submitted in the form of—figures if you like—until those figures are submitted I think there is no warranty for dismissing the recommendations of the MacQuarrie committee, for objecting to the terms of the committee's reference from the House of Commons, for attacking what was said in the House of Commons, or what has happened up to date, or for our doing anything but continuing to hear evidence brought before us by these witnesses. For that reason I propose to vote against the amendment and support the motion of the steering committee.

Mr. HEES: You said you would permit a question?

Hon. Mr. GARSON: Yes.

Mr. Hees: You said there was nothing to stop these people submitting evidence—

The Chairman: Before we have this general exchange, I think it is only fair since earlier members had an opportunity of stating their opinions without interruptions, that we should do the same with those who are left.

Mr. THATCHER: Could we not ask the minister a question?

The CHAIRMAN: That is what Mr. Hees wants to do. Once we get into that we will never get back to the other members.

As chairman, I am going to rule that other members have the privilege of stating their views and then we will have questioning.

Next is Mr. Dickey.

Mr. Dickey: I think I can be very brief. I feel that there have been some very unfair presumptions stated this morning about what the feeling of this committee has been and about the agreement of certain members to suggestions that have been made. For that reason I think we had better be pretty careful to state our views so there will not be any misunderstandings.

I was quite content the other day to let the question that was raised go to the steering committee, but I did that without being convinced that it would be possible or advisable for the steering committee to draw up the kind of set of questions that has been suggested. Now, we discussed essentially this question for an hour and ten or fifteen minutes the other morning and I thought it was pretty well settled. As I see it, there is no question of prejudging any essential matter. The MacQuarrie Commission heard evidence and came to a conclusion. They stated that conclusion and in that sense there is a prejudgment—in that we have before us the recent conclusion of a competent committee. In that connection I certainly, for one, want to have it thoroughly understood that I am not by silence agreeing with any suggestion as to incompetence of the MacQuarrie committee, or any impropriety in the way they have conducted the work that was placed before them. There has certainly been nothing before this committee to show that they did their work in anything but a thoroughly complete and competent manner.

We have this decision before us and, quite apart from the point the minister has made with respect to the way this matter arose and came before us, and the discussion that took place in the House which I think clearly sets the position right—quite apart from that, the proper and sensible, and from the point of view of time the economic way for us to consider this problem which has been

put before us is to hear the people who disagree or agree with the findings of the MacQuarrie Commission. We should hear everything they want to put before us on this subject, and there is no suggestion that anybody has up to now or will in the future be prevented from placing relevant evidence before this committee.

The only thing we are deciding this morning is whether or not we should badger the people who really know what they want to put before us into placing before us something that they, perhaps, in their best judgment, think will not help their case or is not available to them. I do not think this committee should get itself in that position and I think we should proceed to hear the evidence that will be placed before us.

This rather lengthly discussion may have had some value in suggesting to witnesses the kind of thing that will perhaps impress the committee, and it may

assist them in placing their views before us.

On that basis I certainly intend to vote against the amendment of Mr. Fulton.

The CHAIRMAN: Senator Golding?

Hon. Mr. Golding: Mr. Chairman, this has been another interesting discussion and I do not wish to refer to anything that any of the other members have already said. However, speaking personally I thought we were coming to this committee to study this whole situation and ascertain, if possible, whether this policy or this practice of resale price maintenance has been detrimental to the public, whether it has increased the cost of living, or anything else along that line. Now, up to the present time we have not heard any evidence to show that this practice has been a detriment—

Some Hon. MEMBERS: Hear, hear.

Hon. Mr. Golding: And that is the thing that I expected to hear as a member of this committee.

In my life I have always had to deal with problems in a practical way. I would not want to support this amendment this morning because I do not think there is any necessity of going to large expense in getting information that would satisfy me and would perhaps satisfy other members of the committee. I think we should take six, or five, or four commodities, trace those commodities through, and show to the committee that this practice has a detrimental effect on the public—I think we could do that. Then I for one would be satisfied to agree with the MacQuarrie recommendation that it be an offence "... to recommend or prescribe a minimum resale price for his products . . ." That is the first of the recommendations they made.

As a matter of fact, Mr. Chairman, our whole economy is honeycombed with systems of price fixing. We have the legal fraternity, the medical profession, and numerous others, and our friends here this morning—and the Trades and Labour Congress. They too try to fix the price for the commodity which their people have to offer in the production of any commodity—that is the price for labour.

Mr. CROLL: Labour is not a commodity, Mr. Golding.

The CHAIRMAN: Order, order.

Hon. Mr. Golding: I think we should give them credit for what they try

to do for their people, nevertheless they do try to fix those prices.

So, when it comes to a manufacturer fixing a price on his commodity the principle is there and we have it established in marketing boards and so on. We want to be satisfied that the principle is working to the detriment of the public. I hope some witness that wants this whole practice changed will show us that it is harmful and is not beneficial to the public.

That is my submission and I have nothing to say about anybody else.

Mr. STUART: The things I had in mind have pretty well been gone into by the minister and I would like to know whether it is in order for me to ask the Minister of Justice one or two questions?

The CHAIRMAN: It will be in order once we come to the questioning of the minister, but Mr. Hees is going to lead off.

Mr. STUART: Then I have one statement to make.

I was of the opinion that you had to get down to manufacturer's costs and the like in order to form any opinion in this committe. That statement was made known a short time ago. However, after our deliberations yesterday afternoon, and after looking the whole situation over, I can see where if it were not for the representations made by the manufacturers and the retailers, we would already have legislation in the House of Commons to take care of the situation. The government was convinced that it should adopt the suggestions or recommendations of the MacQuarrie committee. It has been put forward by a group who felt they were in a position to convince a committee such as ours, that the MacQuarrie report was all wrong.

It has been stated here that a man is innocent until he is proven guilty but in this connection I think the onus is on the people who asked to come before this committee. I believe they are the people who should bring forward figures which will convince us that the MacQuarrie Report is wrong. That is the job they have; it is not our job. I think they should give us that information voluntarily in order to strengthen the position they have taken.

When I get a chance I want to ask the Minister of Justice a couple of questions.

Mr. Fulton: Did you not say yesterday that we are wasting our time unless we get this information my motion calls for?

The CHAIRMAN: Order, order. The questioning will take place after members have made their statements—whether it is a matter of questioning the Minister of Justice or any other members of the committee.

Mr. Carter?

Mr. CARTER: Thank you, Mr. Chairman.

As I understand it this committee has two uses. One is to consider the MacQuarrie committee report and the other is to recommend amendments to the Combines Legislation based on that report. I find myself somewhere between the two extremes of opinion that have been presented here this morning. I think that we all want to do what is right and we all want to search as much as we can for the truth with which consideration of the MacQuarrie report is involved. Whether or not the position contains all truths, I do not know, but, as far as the information is concerned, Mr. MacInnis spoke of the principle that was involved; that principle is a very important thing and when we come to consider the amendment later on we have to make recommendations which will incorporate that principle in such a way that it will function properly. I do not see how we can do that second part of our job without having certain evidence before us that we have yet not been able to get. I do not think that we should duplicate all the investigations that have taken place before, I do not think we should duplicate the work of the MacQuarrie Committee, nor should we overlap, but I cannot see in my own mind why we cannot make a spot check, take two or three items, washing machines, refrigerators, radios, and make a spot check on that and see what happens. I do not know, but perhaps the steering committee found that that was impossible, but that was a thought that I had in mind. I do not think that we should prolong these sessions unduly, but it seems to me that there is a middle situation somewhere between the two extremes that have been brought in this morning.

The Chairman: Mr. Croll, have you something to say? Mr. Croll: I wanted to wait for a while, Mr. Chairman.

The CHAIRMAN: Senator Lambert.

Hon. Mr. LAMBERT: It seemed to me that this discussion this morning is suggestive of an earnest young man setting out on a long journey with an objective, and the young man is stopping every mile or so to try to make up his mind whether or not he is going to go on to the objective. Now, we have heard three groups of witnesses apart from Mr. Forsey; we have heard the pharmaceutical people and we have heard the electrical people, and we made it quite clear to them, I think, there was certain information that we would like to have that they did not include in their offerings at the time. As a result, I think of the question that was crystallized by Mr. Hees the other day, when it was decided that a certain course of procedure would be followed in relation to the retail dealers association. They are to come back here on Thursday and try to supply us with that information, as to the distinction between the resale price maintained goods and the non resale price maintained goods. Now, in a similar way, the electrical manufacturers are supposed to come back here again and give us some information on this question of spreads between the manufacturer's price and the retail price, the mark-up figure. I submit now, as I tried to convey yesterday in the steering committee, that that information is very essential to our problem of trying to make up our minds as to whether or not the conclusions reached in the MacQuarrie Committee report are justifiable or not, and I am rather opposed to Mr. Fulton's suggestion here because of its impracticability. I do not think this committee is competent -with all due respect to it-to go into all the details of accountancy and examination of costs, and so on. If that is what we are coming to, then I am inclined to think that this committee will have to suggest that another commission of inquiry similar to the Curtis Commission be set up to do this job, because I do not think it can be properly done here. What we are really called upon to do, it seems to me, is to assess the conclusions reached by the MacQuarrie Committee. It is not a question of whether they are wrong, to me, or whether they are right. I cannot tell, to be quite honest about it, so far, as to whether those conclusions are right or wrong. I want to know a little bit more about the circumstances or evidence upon which their conclusions are based. I think, too, that we are going to get nowhere at all on this and, with all due deference to Hon. Mr. Garson's remarks, I think we have to divorce ourselves entirely from the fact that this subject was first of all mentioned in the speech from the throne. Now, that is a fact. This committee is set up to do something. Let us divorce ourselves entirely from the pros and cons of this fact, because if we do not, it simply means we are in a political discussion of pros and cons and of a partisan kind of feeling running in this thing, and I do not feel we will get anywhere with that atmosphere hovering over this committee. I could suggest a very simple way out of it, and that is to refer it to a senatorial committee where you have some judicial point of view and non-partisanship in it—

Mr. Fulton: It is all one party, Senator.

Hon. Mr. Lambert: As a matter of fact, I might commend it to your consideration, but for the moment I would like to say I think we should proceed on the basis of examining these witnesses that have been submitting briefs to us and try and get the information we want, which, in my mind, is essentially this question of mark-up, spread, between the manufacturer's price and the retailer's, and then it is for us to judge whether or not it is too much, and if we want to go into any details of the question that Mr. Fulton raises about accountant's investigation and so on, it can be considered.

The CHAIRMAN: Gentlemen, the time now is 12.15. We have the Trades and Labour Congress here waiting patiently to give evidence. I have given every person who wanted to speak an opportunity to state his case; now we could get into an endless cross-examination of members by members, which I do not think it desirable. Shall we take a vote, first of all, on the amendment?

Mr. Fulton: Before you do that, Mr. Chairman, I would like to read out the resolution that was carried yesterday in committee.

The CHAIRMAN: That is perfectly all right, Mr. Fulton. Mr. Fulton will read the resolution. I just want to say that this committee is master of its own destiny, Mr. Fulton.

Mr. THATCHER: May I remind you, Mr. Chairman, that you promised we could ask the minister one question.

The CHAIRMAN: One question that will be asked of the minister! I have never heard a member of this committee ask one question; it is always eight, nine or ten questions in a row. Mr. Thatcher, you have had every opportunity up to now to state your case, and you did state your case.

Mr. THATCHER: I want to ask the minister one question.

The CHAIRMAN: I am going to put it to this committee whether or not we are going to vote on this procedure. Mr. Fulton has his one point to make, which he raised in his speech, about the motion we are about to put.

Mr. Fulton: I will confine my remarks to the one point, although I had wanted to follow the normal practice in closing the debate and reply to a number of the points raised—

Mr. MacInnis: On a point of order, Mr. Chairman, there is no normal practice of a person moving an amendment closing the debate.

Mr. Fulton: Very well; but I want the opportunity to read what we decided yesterday. The proceedings of yesterday's meetings are not yet printed, but I will read from the typescript: After a discussion the chairman said—and here I am quoting from the record—

"Again that is a matter for the steering committee to decide.

Mr. Fulton: I move the steering committee with our commission counsel and combines commissioner formulate a series of questions to this association for them to bring before the committee at a later date."—

which means, of course, the answers were to be brought before the committee at a later date. Continuing to quote:

"The CHAIRMAN: Not necessarily just this association. I think Mr. Croll suggested it should be all manufacturers' groups coming before us.

Mr. Fulton: Yes, I accept that.

The CHAIRMAN: Let us deal with this one first.

Mr. Fulton: I think we might incorporate in it that our counsel and the combines commissioner sit in with those producing the figures if they want to keep them secret. Committee counsel and the commissioner could sit in so they could satisfy us these are the figures on which we can base a conclusion."

Then Mr. Jutras asked the following: "What does the last part actually mean?" and I said, for purposes of clarification: "The information, of course, would be confidential."

So there was a motion that the steering committee, with our counsel and the combines commissioner, formulate a series of questions for this association to which they would bring back the answers at a later date; and that motion was enlarged to include all manufacturers' groups coming before the committee. The motion was put to the main committee and the record contains, then, the entry "Carried".

So the committee decided yesterday that we should draft a series of

questions to submit to the witnesses.

The CHAIRMAN: The steering committee having met with counsel and the combines commissioner, the ten members of the steering committee decided actually what is here.

Mr. Fulton: They discussed it and decided they should not follow that course. Thus they reversed the decision of the main committee.

Mr. Shaw: I should like to have one matter clarified: does the acceptance of this motion in any way involve nothing but a spot check, or does it involve going into the entire field and securing all available information on which we can base our decision and upon that alone?

The CHAIRMAN: I had better, in fairness, read the amendment in full:

1. That the representatives of the Canadian Electrical Manufacturers' Association be recalled on Monday, December 3.

2. That the Canadian Retail Federation, who are to come before the committee again on Friday, November 30, and the Canadian Electrical Manufacturers' Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.

3. That all questioning of witnesses in future be confined to the arguments

advanced in their briefs,

to which Mr. Fulton moves this amendment:

That, for the purpose of enabling the Committee to compare profit margins and cost to the consumer in both price-maintained and non-maintained goods, Committee Counsel together with the Combines Commissioner procure from manufacturers and retailers appearing before the Committee (as individuals or through their Association) figures for typical commodities in the lines produced or handled by them, showing the following stages in the distributive process:

(1) the factory cost,

(2) the price to the distributor

(3) the price to the retailer

(4) the price to the ultimate purchaser

for price-maintained and non-maintained goods of comparable category and quality; and that with respect to a departmental store or manufacturing concern which does its own manufacturing and distributing the figures be given with the omission of the appropriate stages outlined above; and that Counsel be empowered to employ a cost accountant as and when necessary for the purpose of such study.

Mr. CROLL: Mr. Chairman, if I may. I had not intended to say anything. The Chairman: Mr. Croll, I gave you an opportunity to speak.

Mr. Croll: I know you did, but I did not take advantage of it until Mr. Fulton read from the record that I supported him yesterday, that I supported his view yesterday in the committee.

The CHAIRMAN: I suggest that in all fairness to the committee we can expedite our business now by having a vote.

All those in favour? Contrary?

Mr. Fleming: Will you record this, Mr. Chairman?

The CHAIRMAN: We will have a roll call. Answer yes or no.

Mr. FLEMING: On the amendment.

The CHAIRMAN: Those in fayour of the amendment.

There are nine in favour and 21 opposed.

The question now is on clauses one, two and three of the report of the steering committee. All those in favour? Contrary?

Mr. BEAUDRY: Would you be kind enough to read the few words of the report, Mr. Chairman?

The CHAIRMAN: I will read clauses 1, 2 and 3 of the report:

1. That the representatives of the Canadian Electrical Manufacturers

Association be recalled on Monday, December 3.

2. That the Canadian Retail Federation, who are to come before the committee again on Friday, November 29, and the Canadian Electrical Manufacturers Association be given an opportunity to produce such figures in relation to costs, mark ups, etc., as they may wish, to supplement their briefs.

3. That all questioning of witnesses in future be confined to the argu-

ments advanced in their briefs.

Mr. Beaudry: May I speak to this motion, Mr. Chairman. I would like to point this out and bring out a viewpoint which has not been expressed yet. In the first place, may I point out this, that in two instances during the testimony of the Canadian Retail Federation, the witness stated—I am referring to pages 265 and 266 of the record—that, in one case, it may be well worthwhile to have the Dominion Bureau of Statistics make a survey to find that out, and in a further point in answer to a question, which was this:

By Mr. Fulton:

Q. Are there any statistics available, or have you any statistics from which we could find the percentage of volume of the total trade in Canada which is sold subject to price maintenance?—A. No, sir. The only suggestion I can make is that the Dominion Bureau of Statistics might make a study of it. Every store differs in its proportion and every department of that store will differ in its proportion. There may be a statistical method of discovering it, but I am not sufficiently well informed to say.

I would like to point out this, I would further recall to this committee that on page 249 of the record I myself asked the chair and counsel to secure from various government departments sets of figures which I believe are likely to help the committee in laying down grounds for its own thinking. I want to refer for a moment, if the committee will be kind enough—

The Chairman: Just on this one point of order as to what line the main committee is going to take. That is for the committee. At the moment, however, we are considering the report of the steering committee on this point here. I think it is for the majority of the committee on both sides to bring this matter to a conclusion, to hear our witnesses and then decide. However, I am in the hands of the committee.

Mr. CAUCHON: Question.

Mr. BEAUDRY: If I may raise this question immediately after the vote-

Mr. HEES: I had some views, and Mr. Thatcher had some views to express, and we both gave way.

Mr. Beaudry: I would like to speak on a point of privilege. Everybody in this country is concerned with what we are doing—

The CHAIRMAN: At the moment we are concerned with the report of the steering committee.

Mr. Beaudry: I appreciate that, Mr. Chairman, but I am still speaking on a point of privilege. I would like to have the chair's direction as to when I can submit a view which I think has some bearing on the amendment, on the main motion, and all our labours, and I would like the direction of the chair as to when I can make this statement.

The Chairman: What this committee needs very badly at the moment is a breathing spell. I thought we could hear from Mr. MacDonald. The fourth point in the steering committee's report contains such a suggestion in it, except that we substitute for the name of Mr. MacDonald that of Mr. MacGregor, and Mr. MacGregor is to be called at 3.30 tomorrow.

Mr. Beaudry: In this particular case I wanted to submit a view to the Minister of Justice pertaining to the statement he made earlier.

The CHAIRMAN: I will put myself in the hands of the committee. In view of what other members did who wanted to make points, Mr. Hees and Mr. Fulton and Mr. Croll and others all stood down...

Mr. Thatcher: I did not stand down, Mr. Chairman. You told me I could not go on.

The CHAIRMAN: I did not include you, Mr. Thatcher

Mr. Fulton: You are going to put the question on the report of the steering committee, I just have to indicate that I am bound to oppose that report, because I consider the wording is too narrowly restrictive of the committee's work. I do not say we should divide and have a recorded vote, but I think the vote should be on division.

The CHAIRMAN: All those in favour of clauses 1, 2 and 3 say yes, and contrary, no.

Carried on division.

Now, clause 4:

4. That notwithstanding any previous decision as to hours of sitting, the Committee sit on Wednesday, November 28th, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

All those in favour? Contrary? Carried.

Gentlemen, we have before us Mr. Percy Bengough, President of the Trades and Labor Congress of Canada, and Mr. L. E. Wismer, also of that association. I think on behalf of the committee, Mr. Bengough, we must first express our apologies for this delay, but I am quite sure that in your own organization at times you have points of procedure to decide upon. Mr. Wismer will start by giving us a short summary of the points raised in the brief, which has already been circulated to the members.

Mr. L. E. Wismer, Director of Public Relations and Research, Trades and Labour Congress of Canada, called:

The WITNESS: Mr. Chairman, I think I could say, on behalf of President Bengough, that we listened with a great deal of interest to your debate this morning because to some extent it indicated the same difficulties in the minds of the members of the committee that we have, and that is whether or not we should be in favour of the interim report as to whether or not resale price maintenance is a bad thing or a good thing, and in saying that to you I think

we should lay our cards on the table. We are speaking for the largest organized group of consumers in this country. There are at least 500,000 paid members of our organization and they have in many cases wives, families, relatives and so on, and they represent a very large proportion of the consuming public. It is important, in our point of view, that we should try to know, before we make up our minds, whether the practice of resale price maintenance grows up as a normal human protection in an economy, or whether it grows up as a predatory practice. In the case of working people, wage earners and their representatives, the combining of men in a trade union grows up from necessity; it grows up as a human practice to protect yourselves, not to hurt anybody, not as a predatory thing but as a protection to the people involved. Now, we are not employers and we are not the representatives of employers, so we do not know if employers have the same problems or not. We know what our problems are like. We know we have to chase a continually rising price level with wages, and we have never yet found a way in which we can do it successfully.

We are always lagging a little behind in spite of what some people say and we know from our own experience that the price gets ahead of us. We are very interested in anything you can do or parliament can do to bring some parity between prices and wages. We would like to improve the standard of living; we are not interested in just going around seeking higher wages, and we are not sure whether amending the Combines Investigation Act would help that.

This is the point we tried to make in the brief, we are very sure in our own minds that over the years gradually trade unions were recognized in law as legitimate associations of people capable of making a bargain under law with their employers. If it is necessary that some sort of similar bargains should be made by the employers for the maintenance of their business and their interests, it also should be done under the law. In other words, we favour whatever price fixing has to be done, whether it be done by trade unions and their employers, by lawyers or doctors or any other association of people, and that it be done under the law. We think if you set up a law of that sort in a positive sense, with a consumers' price board where these arrangements can be considered and approved in whatever form they may necessarily take, that we would be moving in a direction which would uphold the principle of free economy.

The CHAIRMAN: We will now proceed with the questioning and because of the time it will be limited to five minutes instead of ten minutes.

By Hon. Mr. Garson:

- Q. Supposing a number of members of your union were working for a certain manufacturing plant, would you like the idea that the manufacturer should have the sole right to fix wages by himself?—A. Definitely not.
- Q. At the present time he has the sole right to fix your prices, his own mark-up of them and the retailer's mark-up on them and all the rest. Do you like that?—A. Has he got that, Mr. Garson?
- Q. Did you not know that?—A. What bludgeon does he use on the retailer to force him into that?
- Q. Under resale price maintenance he does fix your price. I put this question to you, are you not as anxious to get out from under the manufacturers' power to fix the prices you have to pay with your wages, as you are to have some say in the fixing of your own wages?

Mr. Bengough: It applies in some instances but there are, shall I say, many variations of that.

By Hon. Mr. Garson:

Q. Will the witness tell me if they are under any different impression of resale price maintenance?—A. Our views are simply that the manufacturer

finds a way to compel the retailer to sell his goods at whatever price he wants them sold at.

Q. He fixes the price of, we will say, \$10 for a certain article that you have to pay the retailer. He fixes the retail price, the retailers' mark-up and distributors' mark-up and his own price; is that not right?—A. Right.

Q. That is all.

By Mr. Fleming:

Q. May I ask Mr. Wismer if he feels that this so-called practice of price maintenance is a detriment to or perhaps in harmony with public interest?—A. I think we can say this, in so far as the deal is made privately and enforced privately we would have to say no, but where it is a general practice I think we would have to have a lot more information.

Q. Have you examined the draft bill on page 34 of the proceedings of this

committee?—A. I have read the original draft.

Q. You will recall it purports to propose blanket prohibition on resale prices. Would you think that is a proper and desirable way of going about this matter, that we have blanket prohibition, or if we are going to have legislation on it should it be left to determine whether in the particular case the particular type of agreement is in the given circumstances harmful to the public interest or not?

Mr. Bengough: It would have to be flexible.

Mr. Fleming: You wouldn't favour a general prohibition?

Mr. Bengough: No.

By Hon. Mr. Horner:

Q. The experience, of course, of all governments in business is that their business is done on a set price. For instance, in the liquor business, and some governments in other businesses work on a set price throughout all parts of the province in order that people in small communities are served at the same price as those in larger communities. Do you not think in many cases price fixing serves the little local store and those in smaller communities get goods at the same price as the man in the city?

Mr. Bengough: It might soak them more. We cannot guarantee the prices fixed on a minimum; it may be fixed on a maximum.

By Hon. Mr. Horner:

Q. Do you not think the manufacturer interested in selling his goods would not price them so high that he would price himself out of market?—A. Not always. Sometimes it has been demonstrated they would rather sell less articles at higher prices than more articles at a reasonable price.

Q. That wouldn't help employment in his plant?—A. No.

Bu Mr. Fulton:

Q. What is your position with respect to the loss-leader practice as it has been described to us by those who object to it, that is, the selling of a commodity

at less than what it costs?—A. We are very much opposed to it.

Q. What is your view, would you agree that it would only be fair, if we are going to introduce legislation to outlaw in blanket fashion all price maintenance agreements, that we should at the same time introduce legislation to prevent the loss-leader practice?

Mr. Bengough: I think it would be vital it should be done.

Mr. Jutras: We know there is some unemployment in the country at the present time; in your opinion do you think if the retailer was not subject to price maintenance the unemployment situation might improve?

Mr. Bengough: I would not be prepared to answer.

By Mr. Jutras:

Q. On page 11 of your brief you say:

We would like to see an end to the need for private alliances among manufacturers and distributors which tend to maintain prices at too high a level. Unfortunately, an amendment to the law which prohibits the alliances will not necessarily remove the need for the alliances as well.

Now, the word there is "need". Do you recognize there is a need for private alliances at the present time?—A. I do not think our brief says we recognize the need; it is if they recognize the need. That is the point we want to make. We have long recognized the need as working people for alliances between ourselves in order to protect ourselves.

Q. I just put the question to you as to what your opinion is as to whether there is a need or not?—A. I think I can say this in fairness, there was a big inquiry by parliament in the thirties to prevent price spreads and at that time that inquiry was concerned with the ability of the retailer to co-operate with the manufacturer without subsequent disadvantage to the consumer or those who were working for a living.

Q. You just mentioned a moment ago that you were definitely opposed to prices fixed privately. Now, do you know of any other way they are fixed?—A. Well, there are freight rates, all wages are fixed under the law, milk prices are fixed in most provinces now, wheat prices, liquor prices—they are all fixed

publicly.

Q. Do you know if any prices are fixed in any other way under price maintenance apart from those regulated by the government?—A. There are prices fixed; for instance, the large national retailing organizations operating in the large centres across the country in a sense fix prices. I think we have made the point in the brief that one very large clothing organization would not be touched by the legislation whereas others would be, and it would seem to us to leave one organization free.

Q. You recommend in your brief a consumer price control board as a solution of the problem. Now, in theory wages are regulated to a certain degree, and since labour is such a large factor in prices, would you neglect wages or would you be willing to consider including wages under the board?—A. You may recall earlier this year we made a submission on prices and I cannot give you the exact words, but in effect we said if there is going to be price control we are prepared to sit down and discuss how wage stabilization is to be fitted into that. After all we are basically trade unions and concerned with working conditions and of the maintenance of a high level of wages. We are also consumers and concerned with what price we pay, so we have a double interest. If this board is set up we would like to see a substantial consumer representation on that board and we are representing a large organization.

Mr. Shaw: Just one or two questions; would you say your congress or executive body have made a comprehensive study of resale price maintenance and its effect on the consumer?

Mr. Bengough: No, I would not say that; not to the extent it could be done over a longer period.

By Mr. Shaw:

Q. I understood Mr. Wismer to indicate they would register objection to private industry establishing a private system of price maintenance. I understood you to take the position you were opposed to that. Would you

say that would be your principal objection at the moment?—A. I think our basic objection is it is done privately and outside of the normal process of public law.

Q. One other question: would you condone action on the part of the manufacturers in establishing retail prices if it involved a principle of private law? And at the same time things were charger?

law?—A. And at the same time things were cheaper?

Q. No, as a matter of principle, would your congress condone it?

Mr. Bengough: It may be beneficial in some spots and may be entirely the opposite in others. You cannot say yes or no to that.

Mr. Shaw: I believe, Mr. Chairman, we can get an answer to that. I am asking you if the congress would condone a system of private law in the field of resale price maintenance as far as maintenance is concerned without appeal to the courts? Would your congress condone an action of that character?

Mr. Bengough: If it was definitely to the benefit of the consumers.

Mr. SHAW: I didn't bring that in.

Mr. Bengough: You have to, you cannot separate it.

Mr. Shaw: I am asking you if you would condone the principle of a private system of law?

Mr. Bengough: Generally we would condemn it but we would not say blanketly we are going to condone it.

Mr. Shaw: Would it be fair to say that in certain circumstances your congress might approve a private system of law?

Mr. Bengough: I would say we would not object if it was beneficial.

Hon. Mr. Golding: You realize, and I am sure everybody in this room realizes, that any manufacturing company, in order to exist at all, must have a reasonable profit on the products that they put on the markets?

Mr. Bengough: Yes.

Hon. Mr. Golding: If they put a reasonable price on the product, which will give them a reasonable working profit, and a reasonable profit to the retailer, and you were satisfied that it was a reasonable profit, you would not have any objection to the manufacturer saying to the retailer that this is the price we must sell this product for; on the other hand, if it could be shown to you or to the public that these prices were unreasonable and unjustified then, of course, you would have strong objections to that?

Mr. Bengough: Yes.

Hon. Mr. Golding: That is your position?

Mr. Bengough: Yes.

Hon. Mr. Golding: I imagine you want to get the information I want to get, whether these products are taking from the public a profit which is unreasonable, and if we get that information I think you and I can agree upon what we have to say

Mr. Bengough: That is true.

By Mr. Hees:

Q. Now, am I right in assuming you and I a short time ago represented the same riding?—A. There was an election in Ontario but I did not run.

Q. I would like to start off, just to get myself straight on the record, by saying I believe union security is in the best interests of both employer and employee. Now, I think you will agree that a closed shop is a form of price maintenance. I am not speaking of it in any derogatory sense, it is the same sort of thing?—A. It works the same way for moulders as it does for lawyers and doctors.

Q. My question is this, if the government decided to make a closed shop illegal on legislation based on a purely theoretical thing such as the MacQuarrie report, would you consider that would be fair legislation?—A. We would be fighting it as hard as we could.

By Mr. Thatcher:

- Q. Mr. Bengough, I think Mr. Wismer stated that you are here representing the largest body of consumers in Canada. Did your organization at any time ever make representations to the government asking them to abolish resale price maintenance?—A. No.
 - Q. You didn't?-No.
- Q. Can you tell the committee whether your congress has any specific information showing that the practice of resale price maintenance is harmful to the consumer?
 - Mr. Bengough: I have experienced some myself.
 - Mr. THATCHER: Can you give such evidence to the committeee today?
- Mr. Bengough: It would be very small. At one time I happened to be on the board of governors of the University of British Columbia.
 - Mr. Fulton: A splendid institution.
- Mr. Bengough: I do not want to go into the history of my life. At that time we had a depression and arrangements were made with a cheese factory that some of the students take it over and operate it themselves and in return for free lodging and heat they would provide certain tuition in the art of cheese making. It went on very well until one of the unions happened to organize some of the staff and of course I was in a somewhat difficult position. As a result of that an investigation was made because the employer had pleaded inability to pay. Now, we found the cheese he was turning out cost 8 cents and 11 cents and in the retail stores the, sold for 40 cents and 45 cents, which was a large spread between what they manufactured them for and what they sold them for, and the storekeepers made 5 cents apiece. There are many instances, you do not have to look far to find instances of that.
- Mr. Thatcher: After reading your brief, am I correct in assuming that you are not yet convinced in your own mind, whether this practice is harmful or beneficial to consumers as a whole?
- Mr. Bengough: It varies. We did say in here too that you could not separate it from the question of loss-leaders. There has to be some protection there, otherwise your large department stores would be able to have quite a heyday.
- Mr. Fulton: Some of them have already indicated their readiness to do so.
- Mr. THATCHER: Would you turn to page 10 of your brief. Would it be fair to say that you sum up your position in the third paragraph:
 - "Working people learned very early in the industrial period that, despite the law and the attitude of the state, it was necessary to combine to protect themselves, their families and their interests. Perhaps, from the employers' point of view, some combination is necessary for their protection regardless of the attitude of the state".
- Is that a fair summation of the attitude of the congress towards this problem?—A. We have no objection to employers organizing. He may in some spots set prices which would be advantageous and to the benefit of the consumer and in others it would not be.
- Q. You would say as a labour leader, that there may be some parallel between the needs of small retailers for an alliance to protect themselves, and

the need of an alliance or union among your workers for the same purpose?—A. There is no question about the retailers. We have to get together on that.

The CHAIRMAN: Now, Mr. MacInnis.

Mr. MacInnis: I think you said when answering a question that in regard to price maintenance you would not be opposed to it if it would benefit the consumer. Is that correct? I think you said that if the consumer got cheaper goods under price maintained articles, it would be all right to have them price maintained. Well, you said that you were opposed to loss-leader selling. But does not that also benefit the consumer?

The WITNESS: It may, but it goes to the other extreme. You see, there is a degree.

Mr. MacInnis: That is just the point I am making. There is a degree. Well, if there is a degree, you cannot accept the mere fact that you can buy a thing more cheaply or dearer as a criterion for a decision in this matter.

The WITNESS: No.

Mr. MacInnis: So there are other factors?

The WITNESS: Many other factors enter into it, yes.

Mr. MacInnis: That is all.

The CHAIRMAN: Are there any further questions? Thank you very much. Oh, Mr. Mott.

Mr. Mott: I do not know exactly, from listening to your remarks, if you are in favour of this legislation or not; but I noticed in the newspapers published at Port Arthur that you mentioned that the government was stalling on this legislation.

The WITNESS: I believe that.

Mr. Mott: Did you or did you not say that?

The WITNESS: No, but I believe that.

Mr. Mott: If you are in favour of this legislation and price maintenance that is going into it, then why did you make the remark that the government was stalling?

The WITNESS: No. What I said at the time was: I meant: the information had just come through that the government was going to do that. I was happy to see that they were going to do something, but it turned out that they were not. They set up this committee.

Mr. Fulton: Yes, they set up this committee and then they will not give it any information.

The CHAIRMAN: We shall now adjourn until 3:30 p.m. tomorrow, when Mr. MacGregor will be our witness.

The committee adjourned.

APPENDIX A

SUBMISSION

By

The Trades and Labor Congress of Canada

To

The Joint Committee of the Senate and the House of Commons

to consider the Interim Report of the Committee appointed to study combines legislation tabled in the House of Commons, Friday, October 12, 1951; and to consider appropriate amendments to the Combines Investigation Act based thereon.

The Trades and Labor Congress of Canada appreciates this opportunity of placing before your Committee its views upon the feasibility of amending the Combines Investigation Act so as to render it illegal to enter into arrangements as between productive and distributive organizations for the maintenance of resale prices and upon any public advantage which such amendments might produce. As an introduction to our submission to your Committee we would like to place on record our general reactions to the Combines Investigation Act as it now stands and we believe that can be done best by repeating here a few paragraphs from our submission to the MacQuarrie Committee in 1950.

At that time we said:

This Congress is not especially critical of the Combines Investigation Act. What, we believe, should be admitted is the limitations of this type of legislation.

Official references by the Congress to the Combines Investigation legislation over the years since its inception in 1910 indicate approval of the legislation but not much enthusiasm. In the high cost of living conditions of post war inflation in the 1920's, labor was hopeful of anything that would tend to bring prices down into line with wages.

When the Combines Investigation Act, in 1935, was transferred for administrative purposes from the Registrar under the Minister of Labor to the Dominion Trade and Industry Commission (actually the Tariff Board) this Congress made no comment.

The Congress did express its views in 1937 when the Act was again placed under the Minister of Labor, only this time under the administration of a single Commissioner. Approving of this change, the Congress said, in an editorial, in March of that year: 'With prices once more on the upward trend, there is more need than ever for the detection and prevention of price fixing arrangements to give the public protection against artificial price rises, when many will be finding the natural increases in cost sufficiently burdensome.'

In October, 1945, the administration of the Act was transferred from the Labor Department to the Minister of Justice. A month later

a report submitted by the Commissioner of the Combines Investigation Act was tabled in the House of Commons by the Minister of Justice on "Canada and International Cartels". In an official statement in an editorial which appeared in the Congress Journal in December of that year, the Congress left no doubt about its attitude to cartels and the limitations of the Combines Investigation Act. After reciting the many ways in which private organizations restricted production and distribution of materials and commodities, through private trade agreements, as these were listed in the Report, the editorial said this: "There is no question that the inquiry did a good job as far as it went, or possibly was allowed to go. However, to get down to brass tacks, most Canadians would like to know who in this country were in on this racket. The people who suffered the evils of unemployment should certainly be told. They are certainly interested in knowing just who deliberately contributed to their misery."

Then this editorial continued: Now that the legislation has been taken over by the Department of Justice, is justice going to be meted out to the guilty, or is the old procedure to be continued whereby a fellow gets six months for stealing a ride on a box car while another gets a title for stealing the whole railroad?

In the opinion of this Congress, nothing has been done in the last five years to redress the fundamental inequality so aptly stated in the words of the quoted sentence above. And it has become readily apparent that little can be done effectively along this line through the Combines Investigation Act alone, since it is largely a policing and punitive measure capable of action, in effect, only after the damage has been done.

This Congress does not suggest that the Combines Investigation Act is worthless. On the contrary, we would like to see it strengthened to the point where both investigations and prosecutions after the results of the inquiries are available would both be capable of effective execution. But we stress again that we are of the opinion that such legislation will always remain greatly limited in its powers to counteract and reduce, let alone remove, the unfortunate influence upon the public and the consumer of private commercial arrangements concerning markets and prices.

This Congress believes that more positive measures of price control should be undertaken, and with these, positive methods of freeing our economy of the unfortunate influences of those whose approach to business is one of selfish gain regardless of the public interest.

Your Committee, however, is not concerned with the full compass of the Combines Investigation Act, but merely with what was dealt with in the Interim Report of the MacQuarrie Committee, namely, Resale Price Maintenance. Your Committee is concerned with whether the practice of Resale Price Maintenance is good or bad, in the public interest or against it, and with what, if any, amendments to the Combines Investigation Act could effectively stop these commercial practices.

For the purposes of this submission Resale Price Maintenance may be defined as it was at page 256 of Volume II of the Report of the Royal Commission on Prices: there it suggests that resale price maintenance means a fixed price at which the retailer must sell the product to the public as determined by the manufacturer of the product.

How widespread are such practices? It is the answer to this question that would seem to determine the importance of this current inquiry and the work

of your Committee. The Interim Report on Maintenance of Resale Prices refers to the Report of the Royal Commission on Prices. At page 41 of Volume I it reads:

Throughout our inquiry we have been impressed by the degree to which individual manufacturers fix the resale prices of their products and so narrow the area in which price competition amongst wholesalers and retailers is operative.

The Interim Report goes on to say that some estimates were obtained by the Committee from private sources but that these were not very accurate. Then it winds up its statement on "the extent of the practice" by saying that "the practice of fixing resale prices is widespread... (and) ... of significant and growing proportions."

Whatever the Committee had in the way of information before it about the extent of the practice of resale price fixing, it certainly didn't present your Committee or any other interested party with any concrete evidence on which

to base a case either for or against resale price maintenance.

Surely it was not necessary for the committee to be so bashful in its Interim Report. Surely it is readily apparent to anyone that resale price maintenance is very prevalent in most drug lines, and particularly among the best known lines of cosmetics. Surely it is quite as apparent that this practice is usual among the automobile manufacturers, among the cigarette and tobacco companies, and in some sections of the men's clothing and furnishings trade. Without attempting to make this an exhaustive list, the existence of such practices in certain grocery and canned goods lines could be mentioned.

In short it may be admitted at once that the practice of resale price fixing exists, and, perhaps, on a fairly broad scale. The next question, of course, is whether the practice of resale price maintenance is desirable or undesirable,

whether it is in the public interest or not.

The Interim Report attempts an answer to this all-important question through an appraisal of the affects of resale price maintenance upon two aspects of general economic activity: competition and efficiency. Under the heading of "standards of judgment" the Interim Report asks the two questions:

1) does the system facilitate or restrict competition? and 2) does it promote efficiency in the economic system providing the consumer with the goods and services he requires at the least necessary prices? At page 21, of the Interim Report under the heading of "General Conclusion and Recommendations", the answer to these questions is given by the Committee as: "The Committee has studied resale price maintenance in the light of the two standards of judgment originally set up, namely, the desirability of a free economy and the need for economic efficiency. This study has led the Committee to the general conclusion that resale price maintenance, on the growing scale now practiced, is not justified by either of these standards."

It is worth noting that, between page 7 of the Interim Report where these "standards of judgment" are set up and page 21 where they are answered as quoted, in part, above, there is some recital and paraphrasing of the various briefs and opinions submitted to the Committee on this subject, and beginning at page 17 a summary of the Committee's own views. In all of this section of the Interim Report the only references to actual fact or concrete investigation of the situation are to "A Statement on Resale Price Maintenance, Board of Trade, June, 1951" (a statement made by the President of the Board of Trade of the Government of the United Kingdom to Parliament in June of this year on the extent of the practice in Britain), and to certain analyses made by individuals of the situation in the United States. No reference whatever is made to actual conditions or any survey of the situation in Canada.

Regardless of what decisions your Committee may reach in regard to the desirability or undesirability of resale price fixing, it would seem well worth

your while to give some thought to the "Standards of judgment" established by the MacQuarrie Committee and as to whether these are satisfactory yardsticks assessing the advantages or disadvantages from a public point of view of resale price maintenance.

The conclusion of the Interim Report leaves no doubt that "a system of control by private law or agreement", in the opinion of the Committee, "does prevent the consumer from exercising his full influence in determining what services he is willing to pay for" and that it does "restrict competition."

Before accepting these general conclusions without reservation, it might be worth while to consider what would happen in specific cases when and if the law is amended to make resale price fixing practices illegal. Take for example two large manufacturers of men's clothing. The one manufacturer owns or controls, or owns and controls, his retail outlets. He, of course, has full control of the resale prices of his products. The other manufacturer operating in direct competition with the first does not own any retail outlets. He, however, provides services to those independent retailers who handle his products and, as well, fixes the resale price of his goods. If the practice of resale price maintenance is ruled illegal, it would seem fairly obvious that the second manufacturer would be required to cease his present practices. Would the first be required to stop fixing the retail price of his goods which are sold through his own retail stores? If the answer to this question is in the negative, then will not the result of the new law be to reduce effective competition in the men's clothing trade rather than to strengthen it?

In 1934-35 a Special Committee of Parliament made an exhaustive study of "Price Spreads and Mass Buying". At that time it seems that the prime concern of Parliament was the exercise of exhorbitant power by distributive enterprise against not only the consumer but the manufacturer or supplier and those who worked for both the supplier and the distributor. Then Canadians talked of poverty in the midst of plenty. Now we are still confronted with poverty although our dollar earnings are larger than ever before. We are still poor because prices have skyrocketed and we are prone to clutch at any straw that may appear to be helpful in causing any reduction in retail prices.

One possibility your Committee should keep in mind, and, in the opinion of this Congress, make every effort to guard against, in any amendments that may be suggested, is a swing of distributive business away from the smaller outlets and a concentration of such trade in a few very large establishments. This trend toward concentration in the retail field has been argued as a possible result of banning resale price fixing before the MacQuarrie Committee (see bottom of page 9 of the Interim Report). No concrete evidence has been produced in the Interim Report to show the real influences in this regard and in the absence of such facts your Committee is, in essence, acting in the dark.

On the other hand, resale price fixing seems to be used very successfully by the larger distributive organizations as a competitive device. The larger merchandisers offer brands of their own in competition with nationally-known products on which resale prices are fixed. This is noticeable in the drug and cosmetic fields particularly. Yet the brand placed in competition by the large distributor is in the very nature of the operation subject as well to resale price maintenance.

This raises two very important questions for consideration by your Committee: (1) Does this indicate that resale price maintenance does not always lead to reduced competition? and (2) Would the banning of resale price fixing make it impossible for the large distributor to offer his own brands at his owned fixed prices? If not, and it is difficult to see how such a law could be made to fit this type of situation, then it would appear that the large distributor would gain a tremendous advantage over the manufacturer without any apparent advantage

having been gained by the ultimate consumer. Such a development would merely place more economic power in the hands of the larger distributors. It is hard to see where it would increase effective competition or efficiency. It is even more difficult to see where the public interest would be served.

In the automotive field the practice of fixing resale prices seems well established. Since the motor car and its allied products have become necessities for most Canadians, it is very evident that here at least the general public interest could be well served by any move that would tend to reduce the consumer price. And considering the substantial spread between the manufacturer's cost of an automobile and the price paid by the consumer, there can be little doubt that a substantial decrease in car prices is possible.

The question to be considered by your Committee, however, is whether the banning of resale price fixing will tend to reduce the consumer prices of motor cars. The national advertising of motor car companies seems usually to indicate every feature of the automobile except its price. On the other hand, when one seeks to buy a new car he ordinarily finds that all dealers in the district are offering at the same price. Variations in price, of course, could easily be produced

by varying the extras offered in the new car price by the dealer.

More important, however, in our opinion, than the intricate problems of discovery of resale price maintenance in the motor car field that would confront the Administration, should such practices be banned through amendments to the Combines Investigation Act, are the difficulties that this may create for the motor car dealer. Your Committee should give consideration to a specific case such as the following: the dealer under the amended law decides to reduce the price to the consumer of a certain model of automobile. As a result the car manufacturer desirous of maintaining resale prices regardless of the legal position refuses to sell the dealer any more cars. The dealer seeks redress under the new law and the Administration proceeds against the car manufacturer. While it may be assumed that even the largest motor car companies would dislike endless litigation and might fear that such action by the Administration for illegal practices might cause a deterioration in their relations with the public and their goodwill, what will happen to the small dealer who has been refused delivery of motor cars? Is your Committee prepared to recommend, along with the changes in the law to ban resale price maintenance, that the Administration protect the business of the motor car dealer in such cases while it is proceeding against the manufacturer?

We have raised these doubts about these matters not because we favour resale price maintenance as such, but because we are not favourably impressed with the Interim Report. There is an air of artificiality about the Interim Report. It states its case and reaches its conclusions without adducing any pertinent or concrete evidence of resale price fixing practices in Canada. The effect of its vague and quasi-technical exposition is to suggest that it is merely a contrived argument to support a preconception.

We believe in a free economy. We are therefore naturally opposed to any private arrangements which would tend to lessen or restrict a free economy. On the other hand, we are practical people and know the need and value of bargaining power in all economic situations.

The state for a long time refused any protection to working people. It is not so long since any combination of workers was classed as a conspiracy and so dealt with under the law. As a result of the unrelenting efforts of our forefathers among the working people of Canada that situation has gradually been changed. Today there are laws recognizing combinations of workers and which provide for orderly procedures to assist in the reaching of agreements between employers and the certified agent of the employees.

The history of combination among employers and the attitude of the state to such arrangements is rather different. Such combinations have been con-

sidered as opposed to the general public interest and laws have been devised to deal with them. However, such laws, including the Combines Investigation Act, take a negative approach to the problem and combinations among employers exist in all sorts of ways and appear to continue to exist even after action has been taken against them and they have been found guilty by the courts.

Working people learned very early in the industrial period that, despite the law and the attitude of the state, it was necessary to combine to protect themselves, their families and their interests. Perhaps, from the employers point of view, some combination is necessary for their protection regardless of the attitude of the state. While we may all agree that private arrangements such as resale price fixing which restrict a free economy and the competitive flow of prices and goods are undesirable, it may still be true that economic necessity, as that is experienced by the person, or organization directly involved, may dictate that some such arrangement is imperative. Under such conditions it would seem readily apparent, that failing provision of some social control facilities by the state, private groups and organizations within the economy will at all times act for their own protection and self-preservation.

While your committee may recommend in favour of a ban on all resale price fixing practices, and in so doing earn the commendation of the consumers of Canada, of which this congress is happy to represent the largest single organized group, still you will not be attacking the main problem, and you will lead your constituents astray if you do not caution them against the possibility that no prices may go down as a result of such amendments or the possibility that resale price fixing may continue in new forms despite the new law.

We would like to see a reduction in consumer prices and the cost of living. We would like to see an end to the need for private alliances among manufacturers and distributors which tend to maintain prices at too high a level. Unfortunately, an amendment to the law which prohibits the alliances will not necessarily remove the need for the alliances as well.

What we should all be concerned about at this time is how to protect the individual whether he be consumer or merchant, distributor or manufacturer, worker or employer in a free economy. At the same time we must remember that a free economy does not exist because of some law; it exists because of the private arrangements, agreements, alliances, organizations and the whole welter of checks and balances which serve to offset any possibility of one group dominating it completely.

There are those who fear the domination of the economy by the state. Whatever grounds they may have for such alarm, it must be noted that the state already has a hand in the economy. Your committee is asked to consider what further hand the state shall take in the economy. What appears most important is not whether the state shall play a part in the economy or whether the economy will remain free if it does, but what part the state shall play; and whether the state shall play a negative and confusing role or a positive one.

While we would not recommend the repeal of the Combines Investigation Act, we believe that the negative approach of this type of legislation and administrative practice is unlikely to ever have very substantial influences upon consumer prices or to provide very effective means for reducing the private alliances that restrict the free flow of goods and services in a free economy.

We believe, on the other hand, that your committee should recommend positive measures for dealing with restrictive practices in our economy and in so doing provide parliament with suggestions for immediate action against inflation and rising consumer prices. Rather than say that a manufacturer may not make an arrangement to protect the price of his goods and thereby, presumably, his business, it would seem much more practical to suggest that the relationships between suppliers and distributors should be subject to broad social regulation thereby providing for the protection of both along with the consumer.

We suggest that your committee recommend the creation of Consumers Price Control Board which will have power to deal with all aspects of this problem of resale price maintenance as well as with consumer prices generally. We make this recommendation to you because we believe that it would provide for a positive approach to the problem of restrictive practices in the economy and at the same time for a sensible and immediate attack on rising consumer prices in all lines.

Parliament has already granted the power to the government to deal with prices. Your committee, in our opinion, should recommend that action be reserved along the negative lines of amending the Combines Investigation Act and rather that immediate positive action be taken through a Consumers Price Control Board to free the whole economy from restrictive price practices whether these arise as the result of agreements or arrangements or simply from the customs of the trade.

We have made this submission and these recommendations in the hope that they may be useful to your committee in reaching conclusions which will benefit our own affiliated membership and Canadians generally in these difficult days of inflation and outrageous prices and living costs.

Respectfully submitted,

On behalf of the Executive Council,

(Sgd.) PERCY R. BENGOUGH,

President.

(Sgd.) GORDON G. CUSHING, General Secretary-Treasurer.

THE TRADES AND LABOUR CONGRESS OF CANADA

November 19, 1951 O.E.I.U.

Local 225















HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament 1951

CAIXY2 -51C54

(Second Session)

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien Mr. James Sinclair, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

WEDNESDAY, NOVEMBER 28, 1951

WITNESS:

F. A. McGregor, Esq., C.B.E.

OTTAWA
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1951

CORRIGENDA

Evidence, Thursday, November 22, 1951.

Page 146, line 31: higher on things, on maintained items should read higher on non-price maintained items.

Page 158, line 23: but it is not for advertising purposes should read but it is for advertising purposes.

Page 162, line 1: The mark-up price is 76 cents should read The marked-up price is 95 cents.

ORDER OF REFERENCE

Wednesday, November 28, 1951.

Ordered,—That the name of Mr. Blair be substituted for that of Mr. Churchill on the said Joint Committee, and that a Message be sent to the Senate to acquaint their Honours therewith.

Attest.

LEON J. RAYMOND, Clerk of the House.

MINUTES OF PROCEEDINGS

Wednesday, November 28, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

Also present:

For the Senate: The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

For the House of Commons: Messrs. Beaudry, Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Murray (Oxford), McLean (Huron-Perth), Roberge, Shaw, Thatcher.

In attendance: F. A. McGregor, Esq., C.B.E.

Mr. McGregor was called, heard and questioned.

Mr. Thatcher moved that the Committee do now adjourn and that Mr. McGregor be recalled on Thursday, November 29.

And the question having been put on the said motion, it was negatived.

At 5.03 o'clock p.m., the proceedings were interrupted by the division bell in the House of Commons.

At 5.30 o'clock p.m. the Committee resumed.

The witness retired.

At 6.00 o'clock p.m., the Committee adjourned until Thursday, November 29 at 10.30 o'clock a.m.

A. L. BURGESS, Clerk of the Committee.



EVIDENCE

NOVEMBER 28, 1951 3.30 p.m.

The CHAIRMAN: The meeting will come to order. Mr. Hees, do you want to raise a point of order?

Mr. Hees: Yes, Mr. Chairman. Yesterday I made a request to this committee and I would like an answer to this request before we start proceedings today.

The request I made was that Mr. Justice MacQuarrie should be asked to appear before this committee, so that we can find out on what basis he came to the conclusion that resale price maintenance is against the public interest.

I pointed out yesterday that this committee agreed last Friday that only by a presentation of comparative figures, showing the profit margins on both price maintained goods, and on goods which are not price maintained, can a worthwhile opinion be formed as to whether resale price maintenance is in the public interest, or against the public interest.

I also pointed out that the MacQuarrie report, upon which the government bases its proposed legislation outlawing resale price maintenance, contains no comparative figures whatsoever, but is, in fact, a theoretical discussion of a problem which can only be decided, as the committee agreed on Friday, by comparative figures.

I believe that Mr. Justice MacQuarrie should appear before this committee and explain if these comparative figures were secured and reviewed by his committee, and if not, how they came to the conclusion that resale price maintenance is against the public interest.

The Chairman: On this matter of summoning witnesses I think first of all, it should be done after consideration by the Steering Committee in view of other briefs and representations made to us here. We will have a meeting of the Steering Committee tomorrow, at which time I will raise it. The other point is the propriety of having a Judge who is still heading an inquiry coming before another body to give evidence as to the methods by which he is conducting that inquiry, but I think that whole question can best be proceeded with in the Steering Committee tomorrow.

Mr. Hees: On that point, although he is conducting another inquiry, it is the same inquiry, and this is the most important part of it, the part on which the government is prepared to base most important legislation. Having read through that report, to me it is a theoretical report only and I do not believe the legislators—

The Chairman: Mr. Hees, you raised a point of order and you asked for an opportunity to make that point, which was to be in reference to Mr. Justice MacQuarrie, and not to make a speech. I said the Steering Committee will decide two things tomorrow: what other witnesses we will have and, on the other hand, to discuss the propriety of having a Judge, who is heading an inquiry, come before another inquiry or group to tell them how he is conducting that inquiry.

Mr. Dickey: On a point of order. There have been statements made in this committee, and also in Mr. Hees' presentation of his point of order, that this committee made a certain decision regarding the basis upon which this inquiry

should proceed. Now, anybody who will refer to the minutes of the proceedings of these meetings will see that what actually happened was that you stated as is the proper thing, that this matter would be decided by the Steering Committee, and that was certainly my understanding of the motion that was made: that that matter be considered by the Steering Committee. That was the way it was left and the way it appears in the record.

The Chairman: Thank you, Mr. Dickey. We have before us today as our witness Mr. F. A. McGregor, the former Commissioner of the Combines Investigation Act. We are very pleased to have Mr. McGregor come at such short notice. He was not subpoenaed, he came voluntarily, but he explained to me that on account of the time limitation he has not been able to get copies of his submission mimeographed in time to distribute them in advance here, but some time in the course of this afternoon we hope to have copies of his submission. I have also decided on my own volition, in view of the great interest members have taken in this particular phase of the inquiry, that members themselves will have the first opportunity to question Mr. McGregor and our counsel can sum up rather than open the interrogation.

Mr. Fulton: Just before Mr. McGregor starts—have you received a telegram from Mr. C. J. Harris, secretary of an organization called Canadian Unity Council. I just want to know if you have received the wire.

The CHAIRMAN: Yes, I have. One of the matters we will have to discuss in the steering committee is the disposition of the great number of wires and letters that we have received. We will have to sort them out into various groups. They are being acknowledged as they are received.

F. A. McGregor, C.B.E., called:

The WITNESS: Mr. Chairman and members of the committee. Some of you may feel that I am making a sort of Pete Karpuk play by coming out onto this field from the sidelines. I am not a manufacturer, I am not a wholesaler nor a retailer, not even a civil servant. I am a consumer, and consumers have some rights. My only justification for appearing is that I have been invited, and I can assure you I did not ask to be included in the invitation list. When my name was mentioned several weeks ago as a possible witness before a possible committee, I began to give thought to what I might say. When the suggestion was repeated in this committee two weeks ago, I began to jot down a few headings in case I should be called. When the blow finally-rather, when I learned a day or so ago that I was likely to be called, I started to fill in some things under the headings. I have brought with me all I have written, completed only an hour or two ago, and I would appreciate it if you will let me read it. It is not as brief as I would like it to be, but it will take less time than if I attempted to cover the same ground without benefit of manuscript. I am sorry no copies are available at the moment. If mimeographed copies come in, as I think they will very shortly, they will be distributed to members of the committee for their convenience in following what I have to say.

I presume I have been called to appear before this Committee because in my work as a civil servant for quite a few years I had to deal with various types of restrictive business practices, including the practice described as resale price maintenance. Some useful purpose might be served if I were to review briefly my experience of that particular problem and add a few comments largely based on that experience.

My very first major inquiry related to resale price maintenance. It was started in September 1925 within a few days of my appointment as Registrar

of the Combines Investigation Act. At that time we learned that an organization had just been formed, the Proprietary Articles Trade Association (P.A.T.A.) which included between 80 and 90 per cent of the retail druggists of Canada, practically all the wholesale druggists, and as many manufacturers of so-called drug-store products as could be induced to join. There were 157 manufacturers in the early stages. From time to time additions to membership were made in all three branches. The object of the Association was to prevent any reductions in the prices of a long and growing list of articles below the minimum prices which were named by the respective manufacturers. Any retailer or wholesaler who reduced any price had his name placed on the "Stop List", which meant that he was unable to get supplies of any of the goods included in the Association's price list. Two extensive investigations were made, one by myself and a later one by a special commissioner, Mr. L. V. O'Connor, an Ontario barrister. The conclusions reached were virtually the same: it was a combine to prevent prices being reduced and to prevent price competition from operating, as far as the listed articles were concerned, in the retail and wholesale drug business. Both reports were published, and the Association ceased operations within a few months of its inception.

It was a certain satisfaction to see the end of such a comprehensive scheme of price control by manufacturers for the benefit of wholesale and retail dealers. But there still remained the problem of dealing with the fixing of resale prices by a single manufacturer who insisted that no dealer should sell his goods below the minimum price which he, the manufacturer, established. It was still a serious limitation of price competition, but it was unilateral action, each manufacturer who adopted the practice applying it only to his own products. It was questionable then, and still is questionable, if under the Combines Act the courts, dealing with only one arrangement of the kind between one manufacturer and his distributors, would declare that competition had been unduly lessened. Other manufacturers might be doing the same thing in the same trade, but their activities could not be brought before the court in the same action.

If only one or a few of the manufacturers in any one field adopted the practice, and there were plenty others who did not, the damage to the consumer through such a limiting of price competition would not be devastat-But an exceedingly serious situation develops if the practice extends to most or even many of the manufacturers who supply the trade, particularly if they are the important sources of supply. In many lines of business such an extension of the practice is not only a serious danger, it is a fact. Once one manufacturer adopts it, his competitors are immediately under pressure by the dealers to follow suit. Dealers will push the lines of the manufacturers who befriend them and do not hesitate to let the non-complying manufacturers know why they make no attempt to further the sale of their goods, and on occasion, why they refuse even to display them, a threat which has often been made and occasionally carried out. These are the methods which retailers, usually acting independently but sometimes in concert, can and sometimes do use to induce manufacturers to protect them from the annoyance of price competition.

If the dealers were to combine to apply such pressure, the Combines Act as it is now would presumably be applicable. There would still be, of course, the task of securing the evidence, a peculiarly difficult task if the pressure is applied with great subtlety and equal secrecy. I have known of many instances, however, of many business secrets that have been covered that have been revealed, and hid that have become known.

Even such pressure, individually or collectively applied, could be resisted, and such difficulties at least partially overcome, if the manufacturer were to make his appeal direct to the buying public. By creating consumer demand he

might all but compel the dealers to cease such discrimination. Such effort would, however, involve very heavy additions to selling costs, and all costs, as we all know, must be borne ultimately by the consumer, even the cost of persuading him to buy one particular brand of goods rather than another.

I have referred to the Combines Act in this context because of the comment that is frequently heard that the Act in its present form is sufficient to meet whatever disadvantage the public may suffer by reason of a series of manufacturers fixing and enforcing the resale prices of their own goods. Even though they are acting independently of each other, and even though their decision is not made because of external pressure, the result is the same when many engage in the practice—the elimination of dealer price competition. purpose sought to be achieved by the P.A.T.A. in the drug trade in 1925 is now being achieved to a considerable extent by unilateral action on the part of manufacturers. The methods are different, but the results are very similar. In my opinion, for the reasons I have indicated, the Combines Act in its present form is not sufficient to prevent such action. The Act needs amendment. am convinced that such legislation as is now proposed will benefit the public by checking and stopping a practice which is designed to prevent, and is preventing, retail price reductions in a large and increasing number of important commodities.

I see I have almost sidetracked myself. I intended, after referring to the P.A.T.A., to speak of other cases in which the practice of resale price maintenance appeared during my day. In several formal investigations, the results of which have been shown in published reports, resale price maintenance was found to be a factor of some significance, of central importance in some, of less importance in others. It was dealt with at considerable length in the reports on tobacco and optical goods. Its detrimental effects were disclosed, along with those of other restrictive practices, in the reports on dental goods, bread and matches. In these instances, however, it was only one of several restrictive practices which were considered as parts of a whole pattern and the whole reported on adversely because of its undue restraint of trade. The cases before the courts have likewise included a variety of practices in each instance, such as restriction of entry, buying up of competitors, horizontal price fixing, and in the end the court has made up its mind on the basis of the overall restrictions. None of these inquiries, however, clearly involved the fixing of prices by a single manufacturer, except in the case of matches, in which industry the single manufacturer was in the end the only producer of wooden matches.

Apart from the formal inquiries, the issue of resale price maintenance has arisen over and over again. In these instances, it arises as the practice of an individual manufacturer. If a dealer sells below the minimum price he may be dealt with by outright refusal of further supplies, by a warning, or the manufacturer may use his persuasive powers to induce future observance of the fixed prices. These are not the only ways of achieving the desired result of preventing further price reductions. In such cases, however, the essential control is not a matter of combination; it is exercised through the unilateral action of the particular supplier. In the absence of clear-cut prohibition in the law there must necessarily be an element of doubt as to when the action of one manufacturer shades over into the area where collective agreement is an essential feature. Because of the element of doubt, and the adoption of the practice, by many others, some manufacturers have decided that there could be little risk and thus the area of price maintained goods has been further widened.

The extension of the practice in recent years has been alarming. If it continues it will not be long before price control by manufacturers will become the rule in the distributive trade and price competition the exception, as far as branded goods are concerned. Indeed in some trades the practice has already

become so general that practically none of these goods can be reduced in price without the authorization of the manufacturer. The development of such a system may be very enterprising on the part of the dealers and manufacturers, but it can hardly be described as "free enterprise" in the meaning of that term which used to be commonly accepted. Nor can it be said to have any rightful part in a competitive system, which has been recognized by Parliament as a basic element in our whole economy. The undoubted right of the public to the safeguard afforded by price competition is being supplanted to this extent and in these broadening areas, by the questionable right of manufacturers and dealers to prevent price competition in the wholesale and retail selling of their particular products. If the vital element of price competition is removed from a competitive system, what you have left is not a competitive system at all, but a price-controlled system—with prices controlled by manufacturers. In the case of resale price maintenance it is control by the manufacturers with ready acquiescence and indeed urgent advocacy on the part of a very large proportion of the dealers, whose interests it is primarily designed to protect. The minority of dealers who would prefer to maintain their independence and determine their own selling prices have no alternative but to fall in line.

I cannot understand the logic of those who say "But resale price maintenance does not prevent manufacturers competing amongst themselves and they are competing; their prices to the trade are not uniform". From what I have come to know of such things I would agree that they are competing, and competing in price. But price competition between the manufacturers is seriously affected by their maintenance of resale prices. One has only to note how frequently the same or very similar retail prices are named by the manufacturers of similar products, even when their selling prices to the trade differ significantly, to realize how seriously weakened is the consumer's protection through active competition in retail price, the price the consumer pays. But how can you possibly justify price-fixing amongst dealers merely on the ground that the makers of the products are not fixing common prices? So long, the argument suggests, as price competition is operating at one level it need not be insisted on at every level. I have no doubt, indeed I happen to know, that the very men who most strongly advocate resale price maintenance declare themselves to be staunch believers in the competitive system. But it becomes a matter of "competition for thee but not for me". It is highly desirable, they say, that their suppliers should compete in price freely, should be free to reduce their prices to dealers without consulting their competitors. But for us, they go on to say, the special conditions under which we operate would make life intolerable, business unstable, bankruptcy certain, if dealers were free to sell at whatever prices they liked, if they started to cut prices. "Price-cutting", by the way, is the trade word used to describe price reductions, just as "cut-throat competition" is commonly used to describe any competition that affects price reductions. To describe efforts to prevent price reductions such euphemisms are used as "price stabilization", "orderly marketing", "ethical merchandising", and I might add, "resale price maintenance".

The attitude I have just referred to, competition as a good thing for the other fellow, is frequently the attitude of the man who is most vociferous in his declaration of firm faith in free enterprise and the competitive system. I have heard them say, so often, that they are one hundred per cent in favour of the principle of competition, but "Of course," they add, "it must be kept within reasonable limits, particularly in an industry such as ours. It is a peculiar industry; if price-cutting were to break out in our field we would all be ruined, plants would be closed, unemployment would be rampant, the whole country would suffer". One wonders how many "peculiar" industries there are in Canada.

The fact that the costs of distribution service represent a very considerable part of the consumer's dollar (at least 50 cents of the dollar paid by the consumer for some articles and much more for others) makes it doubly important that the normal checks on dealers' margins and prices should not be removed. If price competition is doing its work in keeping down manufacturers' prices to retailers, why should it not operate equally to reduce the prices which retailers charge to consumers? If all dealers in any trade were to enter into a horizontal agreement not to sell a substantial part of their goods at less than certain prices, it would unquestionably be regard as an unwarranted interference with competition and the Act would apply. Why should the law not be made to apply to vertical arrangement which have the same effect of fixing irreducible retail prices? Why should the consumers' right to competitive prices be eliminated by either type of control? Why should dealers' margins not be subject to the kind of pressure that price competition applies?

I don't need to labour the point about the high cost of distribution. People in the trade know how high it is, but people in the homes are much less aware of what they are paying for. I have before me a recent number of a publication issued by the National Drug & Chemical Company. It contains an appeal to retailers to sell "National" trade-marked goods. The heading is "40% Profit to You". Then the appeal continues:

"In keeping with Nation's long-standing policy of assisting the druggist in every way possible to meet changing trade conditions, we are pleased to announce a new price policy giving retailers a minimum 40% profit, and in many cases ranging as high as 54% profit on sales. This new profit policy applies to National Family Remedies and National Specialties, and is available to all druggists from coast to coast."

By Mr. Fulton:

Q. Where is that paper published?—A. It is published by the National Drug & Chemical Company. It is really a house organ.

Q. Where is their head office?

The CHAIRMAN: Is it in Canada or the United States?

The Witness: It is a Canadian concern. I always thought of it as having its headquarters at Ottawa.

Mr. HARRISON: Is that percentage on cost or on selling prices?

The WITNESS: On selling price.

"That is not all", as the advertisement says, for it goes on to indicate what the "pluses" are—Plus 1, Plus 2 and Plus 3. Plus 1 reads:

"GROUP ORDER DISCOUNTS THE YEAR ROUND

as follows:

On a \$10.00 assorted order; additional 3%

On a \$20.00 assorted order; additional 5%

On a \$50.00 assorted order; additional $7\frac{1}{2}\%$

On a \$100.00 assorted order; additional 10%."

Plus 2 offers a further attraction to the retailer—free goods, 13 to the dozen if he buys a \$20.00 assortment. Plus 3 on the next page offers further free goods, and shows several items in which the prices to the consumer are slightly less or slightly more than double the retailer's cost. The first item on one list is Baby cough syrup—retailer cost 21 cents, price to consumers 40 cents. The first item on the second list is liver-iron capsules—retailer cost 98, price to consumers \$2.00.

I suggest that these figures should not be taken by themselves alone. I am submitting them merely as an illustration of an appeal made to the trade by one manufacturer. My information is that these margins are typical of margins generally charged for proprietary medicines and pharmaceutical products. When one producer gives such an inducement to retailers to stock up with his goods, other producers must be under great temptation to offer similar or better margins. The result may very well be another kind of competition, the kind that keeps prices up, competition among manufacturers to secure the goodwill of the retailer by offering better and better margins.

This particular advertisement shows also how large-volume dealers pay much less than small-volume dealers. On purchases of a \$10.00 assortment, 3% quantity discount is given; on purchases of \$100.00 more the discount is 10%. Yet the suggested selling price is the same for all. Under resale price maintenance consumers cannot get any reduction in price whatever

quantity they buy.

It has been suggested that resale price agreements should be prohibited only when the margins on prices are fixed at unreasonable levels. It should not be necessary to argue such a point before this Committee. Since however, the suggestion has been put forward seriously, I would like to make one or two comments. Nothing that I can think of could do more to render the legislation unenforceable than the application of such a test. Who can say what would be the reasonable return for selling any group of articles, taking into consideration the widely varying costs of selling different items, each having its own peculiar cost of distribution? Even a single item may involve more selling cost at one time than at another. The cost of selling is certainly less for the most efficient dealer than it is for the least efficient. Fast-moving goods cost less to sell than slow, packaged goods less than bulk, highly advertised less than the little-known, imperishable products less than the perishable. One type of store is less costly to operate than another. You have only to compare neighbourhood and downtown, chain and independent, specialty and general, clerk-serve and self-serve, credit and delivery as against cash-and-carry. And these are not the only variations by any means. No one reasonable price can be established for any article in all stores, or any one reasonable margin for all dealers. Their costs are not the same and no system of minimum prices or margins should prevent these varying costs being reflected in varying prices.

If any such criterion were established as the basic test of legality or illegality, it would entail the creation of a sizeable organization of statisticians and accountants to assemble and analyze costs and prices and margins. In some respects also such an organization would become a government price fixing and regulating organization which would virtually authorize all margins and prices

which it could not declare were unreasonable.

Such a test has never been applied by Canadian courts in dealing with cases of combines which lessen competition. They have realized the impossibility of determining what prices are reasonable and what are not, and have followed with approval on more than one occasion a frequently quoted judgment which says: "The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow." A sentence from one Canadian judgment is typical:

"The duty to inquire into and regulate prices which may change from day to day need not be imposed on the Court but rather the Court's endeavour should be to seek out the real agreement and to determine

whether it interferes with the free course of trade . . ."

It seems to me that the members of the MacQuarrie Committee were very wise in not submerging themselves in a sea of statistics. They concentrated on the essence of the things which the proponents of resale price maintenance are

seeking to accomplish. They followed the principle laid down by another Canadian jurist, in another combines case, who said:

"The system . . . is not to be judged by its accidents, but by its tendency—not by the circumstance that sometimes the members of the association made no profit, or sometimes too much, but by what the thing was in essence that the defendants were seeking to accomplish. That thing was the prevention or lessening of competition."

The CHAIRMAN: I see the briefs are here. Would you rather follow Mr. McGregor point by point?

Mr. THATCHER: Mr. Chairman, why can't we have the brief?

The CHAIRMAN: From long experience on committees I have found we have some members who read faster than others and when they finish the brief they are rustling around and talking to others, and you are a pretty good person, Mr. Thatcher, at talking when you finish your brief. I will put it to the committee as to whether they should be distributed now.

Mr. Fulton: What are your grounds for opposing it?

The CHAIRMAN: I will put it to the members of the committee who are the masters of their own fate.

Mr. MacInnis: Would it not be better to leave it to each member and when he wants to get a copy of the brief he can pick it up from the secretary?

The CHAIRMAN: The only point is that in following a brief like this you will be rustling around and talking and Mr. McGregor has not a strong voice.

Mr. HEES: Surely we are big boys, now.

Mr. CROLL: But boys, that is what he is saying.

Mr. HEES: I have not been called a boy for a long time.

Mr. Fulton: I wish we had some better qualified teachers.

Mr. Thatcher: Let us not make a farce of this. You are the majority, go ahead.

Mr. Fulton: This is the first instance we have had of a witness reading a brief.

The Chairman: The point being that this witness was called before us on very short notice and was not subpoenaed. Every other group presented a brief to us. Mr. McGregor made no opposition to being called without a subpoena on very short notice and I do not think there is any objection to his finishing the brief. Continue, Mr. McGregor.

The WITNESS: I would like to express regret for not having mimeographed copies ready. I completed my work on this about a quarter past two and I did not have time.

The CHAIRMAN: On behalf of the committee I wish to thank Mr. McGregor for coming here on such short notice to be of assistance to us.

Mr. THATCHER: If the chairman had been doing his job he would have called you tomorrow instead.

Mr. BEAUDRY: That is uncalled for.

The CHAIRMAN: It is entirely uncalled for. Mr. Thatcher knows we have witnesses for tomorrow; but that is on the level of most of Mr. Thatcher's remarks.

The WITNESS: I want to apologize for speaking in a voice that has not been heard in every part of the room. I resent the suggestion, though, that I have a weak voice; my voice is not weak.

Mr. Fulton: That correction is also noted, Mr. Chairman.

The WITNESS: In inquiries under the Combines Act the guiding principle has been the same. That does not mean that statistics have been ignored; but they were not permitted to dominate our thinking or to limit too seriously consideration of vital principles that were involved. I confess I have little faith in conclusions that are based primarily on figures. Few accountants, representing clients with different points of view, seem to be able to agree in their conclusions as to what a series of complicated figures really mean. Any measure which imposed reasonableness of costs or prices or margins or profits as the basic test would certainly be a step toward general regulation of prices by government, which sometimes turns out to be regulation by civil servants—a poor substitute for price competition as a public safeguard.

Perhaps I had better revert to a more moderate tone of voice, this seems to be giving more punch to my words than I intended; they sound more belligerent than I am.

Mr. HEES: Keep punching.

Having in mind the possibility that this Committee might undertake extensive comparisons of costs, prices and margins under different sets of conditions, I have made a few notes which might be worthy of consideration. I should like to preface them, though, with a comment that any comprehensive examination of the kind, by competent accountants as I presume it would have to be, would take months or perhaps a year to complete. I question the usefulness of any such survey, for I believe that in the end it would provide little or no assistance in arriving at proper conclusions. At the end of a year the statistical picture might be completely changed.

It has been suggested by some supporters of the practice of resale price maintenance that the effect of the practice from the viewpoint of the consumer can be determined by comparing the margin which the retailer obtains on price maintained goods and the margin which he obtains on the sale of similar nonprice maintained goods. In my opinion, such a comparison would be meaningless as a method of establishing the effect of resale price maintenance on the actual price paid by the consumer, which is the essence of the problem. In the case of a price-maintained article, the consumer wants to know whether that particular article would be higher or lower in price if the retail selling price were not controlled. As the very purpose of resale price maintenance is to prevent sales below the minimum price established, it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be. The fact that the retailer may secure a larger or smaller margin on some other product not price-maintained cannot be related to the actual price which the consumer must pay for the price-maintained lines. In fact, the practice of resale price maintenance may encourage wider margins on non-price maintained goods when they can be sold under the umbrella established by the higher price on a well advertised, price-maintained line. When Aspirin sells at 79 cents per 100, other ASA tablets may be sold well below this level but not as low as they would be if all Aspirin and other price-maintained tablets were being sold on an active competitive price basis.

It is also necessary to keep in mind that the margin secured by the retailer is not the only margin which affects the price of price-maintained goods. The marketing costs of the wholesaler and manufacturer also enter into the price, as well as any margins which may be taken in addition. If by large promotional or marketing expenditures, the manufacturer of a price-maintained line assumes some of the distributive functions, the margin of the retailer may be reduced but the price paid by the consumer will have to cover such expenditures. On the other hand, if a retailer takes a line and does his own promoting

of it he will naturally require a larger margin, because he is bearing all distribution costs; but the actual price which the consumer pays for the article may be substantially lower than in the case of the well-advertised line.

The only sound comparison of the effect of resale price maintenance on the price of an article would be a comparison of the price of the same article under resale price maintenance and under similar conditions of distribution when the price was not so controlled. Unfortunately it is not possible to make any such general comparisons in Canada as requirements of resale price maintenance have been nation-wide in extent in most cases of price-maintained goods. Because there have been a few states in the United States which have not adopted the so-called fair trade laws, some limited comparisons have been possible in that country. These have borne out the conclusion that resale price maintenance does prevent price reductions. Some examples that can be given are very enlightening.

It is one of my strong convictions that active price competition is a much more effective regulator of prices than any form of direct public control. I am speaking, of course, of normal times and not of periods of national emergency. I have in mind, also, active price competition—it must be made to work. If those who are engaged in industry and trade won't let it work, and government agencies cannot make them let it work, then most of us will have to pin our faith in some other type of control. I still believe that price competition is the dominating factor in controlling most prices in Canada. There are exceptions, but excellent work is being done to restore competition where it has been suppressed and to prevent further suppressions.

I have often wondered why more businessmen who are so anxious to retain the competitive system do not regard the Combines Act as one of their strongest allies in achieving that end. They must realize that every price-fixing agreement, and every shift to such control as we find under resale price maintenance, has a certain effect in shaking the confidence of the public in the competitive system itself. If such restrictions extended to the point where business control of prices was the rule and competitive control the exception, and where it was evident that price competition could not be made to work, public opinion would surely demand establishment of direct government price controls. There are three principal methods of price control—competition, government regulation, and business control. And the greatest of these, and the most effective in the public interest, is competition. But it has to be made to work and made to keep working. Everlasting vigilance is required to keep competition free. The same kind of vigilance was necessary, in the days of the Wartime Prices and Trade Board, to keep prices from going through the ceiling. For that type of control it was necessary to have several hundred prosecutions every month to make direct price control work, and several hundred civil servants to do the policing job. Because competition operates automatically, or can be made to operate on its own, no such elaborate organization is necessary to make it work.

I should perhaps add that in wartime, under conditions of scarcity, direct price control is the appropriate method rather than competition. If competition were free it would be a matter of buyers competing for scarce goods, with the inevitable result of skyrocketing prices, supplies going to those who could afford to pay exorbitant prices.

In the course of the inquiries we made in my day into the practice of resale price maintenance, several considerations impressed me strongly, and I should like to pass them on to you for what they are worth.

First of all, resale price maintenance is a system that is obviously designed to prevent, and which does prevent, reductions in retail prices. Not the prices of all goods, but of all the goods which are made subject to this type of control. The very words that describe the practice, "resale price maintenance", disclose

its object: it is to maintain retail prices—not to prevent them from going higher, but to prevent them being reduced. That is its object: that is its effect.

Most of us know, certainly our wives know, that in some grocery stores the same goods can be bought at prices much lower than in others. That is an indication that price competition is working. Merchants are free to sell at lower prices if they want to. It is not necessary for every grocer to match the low prices of his low-cost competitor. Many are giving services such as delivery and credit, clerk-service, telephone orders, personal attention, which many customers are ready to pay for. But those who don't provide such service and who can effect other economies are not obliged to charge for services they don't give. And in turn customers who prefer to get along without such services are not obliged to pay for what they don't get. Retail grocers are free to pass on to their customers whatever they like of the economies they may effect in their methods of distribution. Retail grocers have been free, and their customers have had some bargaining power, because in that particular field of retail trade resale price maintenance has not been operating except to a very limited extent.

A few grocery items have been subject to that kind of price control, only a few, much less than 5 per cent in my day and most of the items controlled were not foods; they included such goods as floor wax and shoe polish and other household supplies sold in grocery stores. Even then it was disconcerting to say the least, when we learned of the efforts that were being made to add to the number. It comes now as a real shock to be informed by the representative of the Retail Trade Federation (I refer to his evidence at page 262 of your proceedings) that the percentage has risen until it is now "possibly in the neighbourhood of 15 per cent". And this is 15 per cent of foods alone, not including "sidelines". In other words, if this evidence is correct, retail grocers are restrained from reducing the price of 15 per cent of the foods they sell. If we were right in our estimate a few years ago of less than 5 per cent of all grocery items, it would appear that there has been an enormous increase in the number of price-controlled goods in that field. Whether the percentage is less than five or as much as fifteen, price competition still has its effect on from 85 to 95 per cent of grocery store products.

Contrast that with what you would experience if you made a canvass of retail drug stores, in which we are told approximately sixty per cent of the items are subject to resale price maintenance. I gathered from the evidence I read the other day that the estimate was 60 per cent of all drugstore sales including the prescription and soda fountain departments. If that is so, then the percentage of proprietary medicines and toilet goods which cannot be reduced in price is very much higher than 60 per cent. In the drugstores you will search in vain for any lower price on these price maintained goods as between one store and another. These retailers are not free to sell any of them at less than the retail price that has been fixed for them. If they do undersell, they are subject to a penalty, imposed by the manufacturer who fixed the resale price of his goods—and the penalty would be the withholding of any further supply of those goods. Here is a field in which resale price maintenance is flourishing. Here is a field in which price competition amongst dealers, as far as these branded goods are concerned, has been eliminated.

There are other lines of business in which resale price maintenance is operating to a greater or lesser extent. What is alarming about it is that it is on the increase. Within the fields in which it has been introduced, more and more manufacturers are welcoming it or succumbing to it. Of course many retail dealers are welcoming it too, indeed are fighting for it—and how they are fighting—because it removes any serious danger of anyone underselling them and thus forming them to reduce their prices. It guarantees their margins.

Another very disconcerting aspect is the way in which the practice has been spreading from one industry and trade to another. Drug store products are not the only ones affected by any means. One has only to think of cigarettes, electric appliances, many hardware items, men's shirts and other lines of clothing, optical goods, matches. But one other product has made its appearance in the list, a commodity which, of all the things we buy, should never be permitted to be controlled in price in this fashion. I refer to bread. Serious enough it is when products such as toilet goods and proprietary medicines and cigarettes and electric irons and toasters cannot be reduced in retail price unless the manufacturer says so. Serious enough to have the public's right to retail price competition in so many of these commodities eliminated, even if it is through unilateral action by each of a number of manufacturers in so far as his own branded goods are concerned. All this is serious enough, very serious indeed. But when it comes to preventing retailers from making any reduction in the price of bread, the limit surely has been reached.

I might have given that more emphasis by reading it louder.

Mr. Fulton: You didn't need to.

The WITNESS: What is happening wherever resale price maintenance is applied is that many retailers, who should be performing their rightful function as purchasing agents for the community, are becoming the selling agents of the manufacturer. An increase in the manufacturer's price does not bother them too much, because they are working on a percentage basis, which means that an increase in the manufacturer's price to them is almost automatically accompanied by a step-up in their resale price. Not an increase in their percentage, but an increase in their guaranteed margin in cents or in dollars. Under this system the relationship between manufacturer and dealer is changing: the dealer is sacrificing his independence, he is becoming the paid employee of the manufacturer, or, to change the figure, merely the pipe-line through which

goods are channelled from the source of supply to the consumer.

The dealers say that, even if they are not free to reduce prices, they are still engaged in active competition, each one striving to increase his own sales. There is the keenest rivalry, they say, to get customers into their stores. I think all of us will agree that that is so. But when they eliminate price competition, they remove the vital element of a really competitive system. They are under no competitive pressure to sell at lower prices because their competitors are subject to the same restriction. Unable to compete on a price basis, they seek to attract customers in other ways, such as installing costly store fronts and polished and beautifully lighted interiors, mirrors, carpets (no carpets yet in grocery stores!), additional clerks, extensive advertising, extended credits, special deliveries, and other kinds of extra services. Not that we object to most or many of these things. The consumer likes them and, if prices have to be the same in all stores, many will prefer the swanky shop to the ones that are less attractive. Inevitably the owners of the less attractive establishments have to keep up with the Joneses if they are to stay in business. But all these means of attracting business cost money. Such non-price competition is the kind of competition that adds to costs and ultimately adds to prices. Many consumers don't realize that all these extras have to be paid for, and that they are the ones in the end who have to pay for them. If they had their choice between swell stores and swollen prices on the one hand and plain stores and lower prices on the other, many of them, many of us, would choose the latter. resale price maintenance permits no such choice. Under it dealers are not free to offer them any such choice. Competition of the kind that adds to costs and prices is no acceptable substitute for competition in price, which reduces costs and prices.

I should be made subject to some maximum time limit. If I had unlimited time I would like to discuss the effect of resale price maintenance in increasing the number of outlets. The assurance of a guaranteed margin is naturally a feature that attracts into the price-controlled lines of business many more dealers than are needed to provide adequate service for the community, and maintains in business many more than are needed. It invites those in other lines of trade to add price-protected goods to their stocks. You have only to glance at the shelves of some grocery stores to see how they have been encroaching on the territory of the drug stores. The druggists should, of course, be the last to complain; their stocks include nowadays a multitude of lines which bear no relation to the traditional stock-in-trade of a drug store. It would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of outlets. Instead of offering statistics I submit an extract from a statement which was made several years ago by the Secretary of the British National Pharmaceutical Union:

"In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of those vendors was increasing at the rate of eight to nine thousand per year . . .

It is a fact that owing to the success of the price-maintenance movement initiated by the P.A.T.A. 38 years ago, the prices of proprietary medicines are in fact maintained and the 20 to 30 per cent profit which those articles yield has proved a tremendous temptation to other shop-keepers to invade the proprietary medicine business. Grocers and other trades with large turnovers in household goods are accustomed to a gross profit of 12½ to 15 per cent; hence any goods selling at a protected price which yields 25 per cent gross are regarded as extremely profitable merchandise lines to be cultivated.

Hence you will see that the success of our own war to prevent price cutting within our own ranks has produced an army of competitors in our own business . . ."

—Drug Trade News, September 13, 1937, p. 18.

Resale price maintenance is not all that it is cracked up to be even as a benefit to retail dealers. As outlets increase the volume of business left for each dealer declines and therefore his own profits decline.

One argument is used probably more than any other by those who want resale prices controlled by manufacturers rather than by price competition. They say that many small businessmen will be driven out of business. It is rather an appealing argument because most of us have strong sympathies with the small independent retailer. If it were true it would weigh very heavily with most of us. But surely the independent retailer can justify his existence as an independent element in the community without this artificial protection of his margins. As a matter of fact he has done it in many fields of business without calling on manufacturers to guarantee his margins on branded goods. For years grocery stores carried on without any such restraint, and the independent retail grocers were not eliminated. They are still going strong.

There are widely varying estimates of the extent to which resale price maintenance is practised in Canada. Some say it affects only about 5% of all retail sales, and therefore there is nothing to worry about. Well, if 5% is accurate, how does it come that the other 95% of retail business is being carried on without manufacturer interference. If, as some other price-maintainers maintain, as much as 30% of retail trade is controlled in this fashion, it would seem to be high time that something were done about it. In any event, whether it is 5% or 30% there can be no question about the prevalence and spread of the practice. There should be no question either, about the

desirability of positive action to eliminate a practice which has as its avowed object the maintenance of retail prices and the prevention of retail price reduction.

In every argument I have heard in favour of resale price maintenance, prevention of "loss leaders" has been emphasized as one of the most important of its objectives. The term has always been used as loosely as "cut-throat competition", as an epithet of opprobrium. I have always suspected that when it was used by businessmen who favoured the so-called "stabilization" of prices they had in mind any article sold at any time at any price lower than the price that generally prevailed, or lower than the price they would like to have prevail. I never expected to find as bold a statement of this attitude as that given by one of your witnesses on Friday last, a representative of the Retail Trade Federation. May I remind you of his evidence on this point:

If I asked around business what a loss-leader is, I would learn that in the opinion of some dealers a loss-leader is a price at which their full-mark-up is not achieved; and in the opinion of others, a loss-leader is one in which they fail to recover their costs; and in the opinion of still others, a loss-leader means merchandises which they have failed to sell to the public, and which the public has found to be unacceptable at the price at which they have offered it, and that

any release from that price is a loss-leader.

I find it difficult to understand the last part of that sentence. Then he goes on:

I think if I were to give a personal definition of loss leader—

and this is an official of the Retail Trade Federation who is in charge of the foods division of that organization—

the closest I could come to it would be: a loss-leader is a price which does not represent the full mark-on, and which is designed to attract traffic into your place of business.

On second thought the witness would no doubt wish to revise the definition, but I thought he rather let the cat out of the bag by indicating that what dealers really want is to prevent anything in the way of price reduction. Even a one-cent reduction is a "loss leader" under this definition because the resulting price would yield less than the full mark-up. In such a case the dealer who reduced the price would be suffering the loss of a cent on the particular item, but he would not be selling "at a loss", would not be selling below his invoice cost for example. If he did sell below his own cost for the purpose of attracting customers to his store, such a practice might properly be described as loss-leader. The big stores seldom resort to such a practice. When they do, there may or may not be economic justification for this action.

The argument goes on to claim that the consumer suffers in the end. There may be a price advantage in the purchase of a single loss-leader item, they say, but the dealer recovers his loss by charging consumers exorbitant prices for other goods once they are enticed into the store. But the question arises, how can the dealer exact excessive prices on other goods if in selling them he has to face the competition of his rivals in business. The remedy that is applied under resale price maintenance is not designed for the protection of a gullible public. It is designed for the protection of the dealers, not only against loss leaders but against all price reductions that are not acceptable to them.

Even if the loss-leader practice were something that should be condemned in every instance, there can surely be no justification for drastic measures which would prevent all dealers from reducing the prices of their goods by even a fraction of a cent. The penalty for such an offence, if offence it be, is a severe one. It falls not upon the offending merchant but upon the whole

community. It is too heavy a penalty to impose upon the public because an odd dealer sells an odd article at an odd price. It is too costly a premium to pay

for insurance against the occasional outbreak.

There are many other things that should be said. Even if your patience were not by this time exhausted, I find that my brief time for preparation is. You may have gathered from what I have said that I am opposed to the practice of resale price maintenance.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: I am opposed to it because of the rigidity it imports into our economy, a rigidity that makes it difficult for many retail prices to decline. It is a system whereby many retail prices are fixed by one party (the manufacturer) for his benefit and the benefit of a second and third (the wholesaler and retailer), but to the serious detriment of a fourth (the consumer). They call it an outgrowth of a system of free enterprise. To my mind it is a negation of freedom that will kill the kind of enterprise that is so much needed by the Canadian public today.

The CHAIRMAN: While these copies are being distributed we should take a few minutes recess, perhaps.

The quotation Mr. McGregor mentioned and of which he did not have the

page number appears at page 259.

Mr. Beaudry: And there is a correction of fact—the gentleman was not interested in retail foods but he was the general manager of a departmental store.

The CHAIRMAN: He referred to Mr. Harris, the principal witness for the Canadian Retail Federation.

Mr. Beaudry: He was not interested in food. As a matter of fact we had a separate food expert from the federation. That is on the record.

The CHAIRMAN: Mr. Hees?

Mr. HEES: I think Mr. McGregor has answered all my questions.

The CHAIRMAN: Mr. Hees declines. Mr. Croll? Mr. Shaw? Mr. Beaudry? Mr. Fulton? Mr. MacInnis? Mr. Thatcher—we do not want both voices of one party at the same time so it will be Mr. Croll? and then Mr. Thatcher.

Mr. THATCHER: Why not put me on next week sometime?

Mr. CROLL: Mr. Chairman, I think it is my turn, is it not?

The CHAIRMAN: Yes.

Mr. Croll: Following just what Mr. Thatcher has said, as far as I am concerned Mr. McGregor "has spoken", and I have enjoyed every moment of it.

The CHAIRMAN: That was Mr. Hees' comment too.

Mr. CROLL: Yes, but I am going to add something else. I would like to give my turn to Mr. Thatcher because he is opposed to the legislation and I am not.

The CHAIRMAN: Yesterday I was pretty rough on the question of whether one member of the committee could cross-examine another member—

Mr. CROLL: I am not cross-examining, Mr. Chairman, I am just giving Mr. Thatcher an opportunity—because he may not be here next week. I am giving him my turn.

Mr. THATCHER: You are just making a snide remark, Mr. Croll.

The CHAIRMAN: Mr. Thatcher, Mr. Croll has very generously given way—

Mr. THATCHER: I will just take my regular turn. All I want to have is fifteen minutes and I will take it after Mr. MacInnis.

Mr. MacInnis: I didn't ask for any time.

The CHAIRMAN: You were nodding.

Mr. MacInnis: I was nodding in approval. Mr. McGregor has said some things which I have been trying to say in this committee for the last two or three days.

The CHAIRMAN: In that case Mr. Shaw is the next one.

Mr. Shaw: I am pleased that you observed a nod but you misinterpreted it this time. I did not have a question.

The Chairman: Well, certainly one member was not nodding, his hand was up. I refer to Mr. Beaudry.

Mr. BEAUDRY: Is Mr. Hees next?

The CHAIRMAN: Mr. Hees stood down. The ten minute rule will apply for the first round of questioning.

Mr. Beaudry: If the ten minute rule applies I would rather someone else questioned.

The CHAIRMAN: Well, I am in the hands of the committee.

Mr. CROLL: Mr. Chairman, let us have the position quite clearly. There are some of us who are in favour of this legislation and there are others who are in opposition. It is obvious what position Mr. McGregor took—and those of us who are in favour have no questions to ask. We are more than happy that the others should be given ample opportunity. We know who they are, so give them all the time they want.

Mr. Chairman: I am thinking of those who are opposed—unless they have elected Mr. Beaudry as their sole spokesman.

Mr. Croll: I am suggesting that the people who are opposed take all the time—

Mr. Macinnis: We made a rule a few days ago, with the unanimous consent of the committee, that each member should have ten minutes. The chairman does not know how many more want to take some time and if Mr. Beaudry takes forty or fifty minutes, as he did the other day, it is then going to take the time of opponents of what Mr. McGregor has said—they will not have any time. He can have a second chance if there are no other questions.

Mr. Thatcher: Mr. Chairman, Mr. McGregor has made some very strong assertions this afternoon and some of us only had the opportunity of seeing them or hearing them when we came to the meeting. We have not had a chance to go through the brief. I think everybody on the committee wants to be fair—

Mr. CROLL: Do you?

Mr. Thatcher: I think every member of the committee has expressed the opinion that the two sides to this question should be heard, but in fairness could we not adjourn until tomorrow morning?

Some hon. MEMBERS: No, no.

Mr. Thatcher: Just a moment—to give those who are not so sure this practice is not in the interests of the community as a whole an opportunity of looking over the brief, studying it, and examining it properly. I respectfully suggest that just after having this thing in our hands three minutes we should not be expected to know all the answers. I do not think it is possible. I would move that we adjourn.

The Chairman: I would suggest that perhaps both groups would be pleased if we gave Mr. Beaudry whatever time he wants and during that period Mr. Thatcher can study the brief.

Mr. Thatcher: No, no. I would move that Mr. McGregor be called back tomorrow morning—that the committee adjourn and hear him first tomorrow.

The Chairman: On this matter of witnesses being called back, we have to have some planning in advance. As a matter of fact the steering committee has agreed that we would call back tomorrow the druggists, on Friday, the Canadian Retail Federation, and on Monday the Electrical Manufacturers. We are a public group and we owe a little courtesy to these people who have to leave their businesses, come here, and go away again. I think we are all now getting pretty well versed in resale price maintenance and I think we can profitably spend the time until six o'clock with Mr. McGregor. However, I will accept the motion. You move that we adjourn.

Mr. Fulton: No debate on the motion. The Chairman: It is not debatable.

Mr. BEAUDRY: I have a point of privilege-

The CHAIRMAN: Mr. Beaudry, the motion is not debatable under any circumstances.

Mr. Beaudry: I am not debating it—this is a point of privilege.

Mr. Croll: There is no point of privilege.

Mr. Beaudry: It is this. Twice my name has been mentioned as wanting to question, and I do, but I do want to state that it brings up a slight difficulty with your statement that I am opposed to price maintenance legislation.

The CHAIRMAN: I apologize to you for that statement.

Mr. Beaudry: I am interested in the question of that legislation. I do not represent a group of members of the committee. When I speak I speak for myself and I certainly do not want to take on myself the responsibility, which you just very kindly but nevertheless actually thrust upon me, of upholding one side. I am upholding Beaudry only.

The CHAIRMAN: I want to tender you my apology. I merely picked up Mr. Croll's remark. My views, and the views of every member of the committee are his own, and his alone.

Mr. Fulton: I was going to raise the same point. Mr. Croll may have applied it to a certain member, but it is on the record that those who might wish to question Mr. McGregor must obviously be those who are opposed to this legislation. I want to point out that there is no basis for such an assumption.

The CHAIRMAN: I entirely agree with you, there is no basis.

Mr. BEAUDRY: And there was no sufficient evidence-

Mr. Croll: The one man who knows what he meant is Mr. Croll. He meant just what he said, but he does not want to hurt anybody's feelings—

The CHAIRMAN: And you will withdraw?

Mr. CROLL: Of course.

The CHAIRMAN: All those in favour of the motion?

Motion lost.

Mr. Beaudry: Mr. McGregor, we have both reached an age in life where we can state our ages without fear of losing any further favour. I am 45, would you mind telling me how old you are?

The WITNESS: 63, and a grandfather.

Mr. Harkness: How about you, Mr. Beaudry?

Mr. BEAUDRY: I stand on my constitutional rights-

The CHAIRMAN: A little louder.

96644-3

Mr. Beaudry: I assume that you have reached the age, quite some time ago, where your opinions do not vary considerably?

Some Members: No, no.

The Chairman: Mr. McGregor is quite competent to answer any question which any member of this committee might ask him—I am sure of that.

The WITNESS: There is no question.

By Mr. Beaudry:

- Q. There is no question? That is the answer?—A. Take it whichever way you like.
- Q. Have you in the last five years acquired any special or general experience which might make you view things in a light different to that which you viewed them up to five years ago—in connection with combines and price maintenance?

Mr. MacInnis: Mr. Chairman, on a point of order.

The witness should be questioned on matters of fact and he should not be questioned—by leading questions—as to whether he is biased, or whether he has come to a conclusion that changed his opinion five years ago. He should be questioned on facts and nothing else.

Mr. Fulton: In Mr. McGregor's brief he has expressed a great many opinions which are unsupported by facts.

Mr. Croll: By thirty years experience.

Mr. Fulton: I am speaking to Mr. MacInnis' point of order, that the questions put to Mr. McGregor should be confined to facts. It is impossible to confine them to facts because the brief is a statement of opinions. I am not questioning his qualifications as to his opinion, but you cannot question him as to his brief on facts.

The Chairman: After two hours of debate we passed clause 3 of the report of the steering committee—"that all questioning of witnesses in future be confined to the arguments advanced in their briefs."

Mr. BEAUDRY: May I speak on a point of order?

The CHAIRMAN: Surely.

Mr. Beaudry: I will refer to the opening five lines of Mr. McGregor's brief in which he states:

I presume I have been called to appear before this committee because in my work as a civil servant for quite a few years I had to deal with various types of restrictive business practices, including the practice described as resale price maintenance. Some useful purpose might be served if I were to review briefly my experience of that particular problem and add a few comments largely based on that experience.

I submit that it is quite in order for me to probe a little bit in view of these lines. I think I am strictly within the meaning of the decision yesterday.

The WITNESS: May I answer the question, Mr. Beaudry? You ask about the last five years.—As I have indicated in the statement I have just made, when the information came to us first in 1948 that the resale price maintenance principle had been applied to bread, I took a very much more serious view of it. I have taken an even more serious view of it since 1948. Within the last month there has been occasion for greater concern because of statements made before this committee by witnesses who have indicated that the practice has been widely extended and in now operating in many industries.

By Mr. Beaudry:

Q. May I divide my question. Until you read the evidence of this committee some of the opinions which you now hold you previously did not hold?—A. It has confirmed the opinions I held. Additional evidence has been brought to light which confirms my belief in the opinions I expressed three years ago.

Q. I do not want to quibble with you but I would like the record to be

reread as to what your answer was, sir?

The CHAIRMAN: It has not been the practice in any committee I have been on to have the record read back. The witness is here and he can answer from either another question or from recollection or both.

By Mr. Beaudry:

Q. I am sorry—and I am quite willing to defer.

In your capacity as Commissioner of Combines from 1925 on, do I understand that there was no prosecution made by you under the Combines Act such as it was instituted for the purpose of obtaining conviction against someone on the grounds of illegal resale price maintenance?—A. I explained in my statement that some of the actions taken have related to resale price maintenance—associated with a number of other restrictive activities. There have been some.

Q. I would change my question. Did you ever institute proceedings from 1925 on with respect to the specific subject of resale price maintenance?—A. I did not institute proceedings. I have had nothing to do with the court proceedings; it was my job merely to bring facts together and submit a report. Our reports have included references to resale price maintenance practices; in them we have expressed our opinion that they were against the public interest. Usually—in all cases I think—they were not confined to the one practice.

Q. You are answering my question and saying that to your knowledge since 1925 there was never any prosecution launched on that specific question

by itself?—A. By itself—yes, you are right.

Q. In your capacity as Commissioner of Combines did you testify before the Special Committee on Prices during the year 1948, and more specifically, on Monday, February 16, and Tuesday, February 17th, 1948?—A. Yes.

Q. Will you accept my quotation of the original record as authentic?

The CHAIRMAN: I think Mr. McGregor would like to hear what you are going to read.

Mr. BEAUDRY: I just want to know.

The CHAIRMAN: Well, I do not think that any member of this committee is going to take a document and mis-read it—but read it so the witness's memory may be refreshed.

Mr. Beaudry: I refer you to answers made by you to questions put to you by members of the committee—the Special Committee on Prices. I refer particularly to a question put to you, following a series of other questions, by Mr. Harkness, who is also a member of this committee.

The CHAIRMAN: What page?

By Mr. Beaudry:

Q. Page 221. If after reading it it is thought the question is misleading, that it does not allow enough of the context, I will go over more of the context.

Following a series of other questions Mr. Harkness asked:

It is in connection with resale price maintenance paragraph 12 on page 6. I would take it you do not as a general rule look on resale 96644—34

price maintenance as an inimical practice. I am thinking of the best example I know, of the case of automobiles in which every automobile dealer has the price set by the manufacturer, and he is required to sell at that price. That is the general practice and commonly accepted, and the same thing applies to a considerable number of other commodities. I take it from the fact that the situation exists you do not look on resale price maintenance as a bad practice as far as a large number of commodities are concerned. Is that correct?

The answer as set out in Hansard is:

I have indicated in a later paragraph, paragraph 18:-

I believe that is a reference to a statement or a brief which has been then submitted by Mr. McGregor as commissioner of Combines.

I have indicated in a later paragraph, paragraph 18 that: One cannot deal with the problem of resale price maintenance without recognizing that some manufacturers might have some justification.

I have taken a pretty strong attitude in this brief on the question of resale price maintenance. I realize that a case can be argued on the other side. If these issues were all capable of being referred to as black and white it would be a very much easier job of administration. Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

Have you anything to change in that testimony, Mr. McGregor.—A. No, no change. I would like to explain that under the Act as it was then, that was an obligation placed upon us—to examine each particular case in the light of the circumstances.

I should refer you also to the sentence you have read from paragraph 18, part of the statement I had made on the previous day. It was a written statement:

One cannot deal with the problem of resale price maintenance without recognizing that some manufacturers may have some justification in seeking to protect the prestige of their products by maintaining some supervision over the conditions under which it is sold to the public.

That doesn't mean they would be justified in imposing something as drastic as resale price maintenance provides. They may have some justification in seeking to maintain the prestige of their product—but not in seeking to prevent all price reductions. The words used are, "by maintaining some supervision". "Some supervision" does not mean going to the lengths that resale price maintenance goes to.

The CHAIRMAN: What is the page on which that reference is to be found, Mr. McGregor?

The WITNESS: Page 161 of the proceedings of the Special Committee on Prices, February 16, 1948.

By Mr. Beaudry:

Q. Mr. McGregor, you have, at least in my mind in the answer you gave to the committee, interpreted the evidence you gave to the committee at that time. I want to establish the difference in the citation between the quotes and unquotes. The unquote reads:

I realized that a case can be argued on the other side. If these issues were all capable of being referred to as black and white it would be a very much easier job of administration. Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

—A. You quote me, and I agree that a case can be argued on the other side. I still agree you can argue a case on the other side.

Q. Do you agree with the last two sentences, or the last one—and that was not part of your brief, it was an answer to a member of the committee:

Here is a case where I think you have to examine the particular commodity and the particular circumstances in every instance.

That answer was made in a committee discussing prices, when you were asked your opinion on resale price maintenance and its effect on prices?—A. You are asking me if my opinions ever change. Yes. In this particular case, they have been conformed—because of all I have heard since then of the extension of this practice into so many lines. I do not see any alternative but to make the legislation apply to all lines—

Q. To your knowledge how long has that practice been extant?-

A. From what I have learned during the proceedings of this committee—

Q. That was not my question, pardon me. To your knowledge, how long has the practice of resale price maintenance been in effect in this country on a wide scale?—A. I think certainly in the last ten years it has been very widely extended.

- Q. What was the cause of your special investigation in 1927—the letters you quoted—P.A.T.A.?—A. In 1925?
 - Q. Was it in 1925?—A. Yes.
- Q. What was the cause of the investigation? Was it not resale price maintenance?—A. Yes.
- Q. Would you not say that resale price maintenance was a factor more than ten years ago—perhaps as far back as 1925?—A. Yes, but at that time the practice then had a setback because of the action taken under the Combines Investigation Act.
- Q. I appreciate that but I am speaking of your knowledge. I will try not to refer to the record but I will if the chairman will authorize me, or in case my memory is at fault. You have just stated in the last ten years, or that it is only in the last ten years that the practice has come into such wide effect; and that you have had occasion recently, I would say in the last two or three or five years, to revise your opinion. I am suggesting the practice has been a well-known practice as far back as 1925. Therefore, it is hard for me to understand the statement you now make?—A. And what is the question, sir?
- Q. Well, the question is logically, I believe, against your statement that it was a wide practice only in the last ten years. Was it not a widespread practice as far back as 1925?

The CHAIRMAN: Pardon me, in fairness to Mr. McGregor, the question you are asking now is not the question which you asked three or four minutes ago.

Mr. BEAUDRY: Would you authorize the reporter to read the question?

The CHAIRMAN: No. You asked whether the practice was known, and I think there is a difference between a practice which is "known" and a practice which is "widespread".

By Mr. Beaudry:

- Q. Was it known and widespread?—A. May I answer the question this way. It was extensive even after 1925. It has been very much more extensive in the last ten years.
- Q. Was it extensive enough from 1935 till 1941 for the commissioner of combines to be able to delve into it and formulate an opinion on its good or bad effects?—A. Yes, the commissioner of combines did delve into it and formed opinions about it and, as I indicated in the statement I have made, difficulties

appeared as far as the Combines Act was concerned in dealing with the case of

an individual manufacturer fixing his own resale prices.

Q. In that case, in 1948 the commissioner of combines had very definitely ample time to formulate in his own mind definite opinions—and I refer to page 212 of the same report, again answering Mr. Harkness. The first question may only be the introduction to the later stages. Mr. Harkness asked the witness:

By Mr. Harkness:

Q. This discussion on monopolies, it seems to me, has been of rather a general character and in order to get some idea of how important they have been in our economy, and therefore in raising prices, which is the matter we are trying to get at, I wonder if Mr. McGregor could answer me this? Leaving out of your consideration what is generally known as a natural monopoly, such as the lighting of a town, and also monopolies based on patents, how many monopolies have operated to your knowledge in Canada in the last ten years?

The answer was in the form of a question:

"A. Single firm monopolies?

Q. Yes, say monopolies in the distributive trade or the manufacturing trade.—A. I do not think there have been any in the distributive trades."

And, further—I am overlooking a question, but I will come back to it if it is necessary to establish the sequence of thinking—

- "Q. I think the part we want to get at is what effect monopolies have on raising prices and the economy generally. As I understand your answer, in the last ten years you have had no monopolies in the distributive industries. What do you say about the manufacturing industry?—A: In two or three cases that we are examining, as I have indicated in the brief, the monopoly element enters.
- Q. Can you give us any indication of the number of cases of monopoly in the manufacturing industry in the last ten years?—A. The cases in which we have made examination might number a dozen in the last ten years but it is not all single firm monopoly. I think the other is just about the same kind of thing, where you have two or three companies which have what we refer to as monopolistic control. That is the same thing.
- Q. What would you say has been the degree to which monopoly has entered into our general economy? Would you say it entered in 5 per cent of the cases or 1 per cent of the cases or what would you say?—A. I do not think I could give you any figures. I would like to be more exact in any statement.
- Q. At any rate, I understand from your answer that it has been relatively small?—A. I do not think, as far as the work of this particular parliamentary committee is concerned, that the single firm monopoly is a question to which you would have to give a great deal of consideration."

The CHAIRMAN: We will pick up at this point when we come back from the chamber. We are not adjourning, Mr. McGregor. We will come back when the vote is over.

(Upon resuming:)

The CHAIRMAN: Order. Mr. Croll will lead off and give way as soon as Mr. Beaudry comes in.

Mr. Fulton: Is he next on the list?

The CHAIRMAN: Pardon me, Mr. Fulton is next. You will go on until Mr. Beaudry comes in.

By Mr. Fulton:

Q. Mr. McGregor, to my mind at any rate you are not quite clear on one matter on which you have been asked some questions. I would like to ask a further question. Did you, as Combines Commissioner, make any inquiry or institute any investigation directed specifically to the matter of resale price maintenance?—A. Of a particular manufacturer?

Q. Yes?—A. Yes. In our preliminary inquiries we did very frequently have that problem before us. However, as I have indicated in my statement, we did not have legislation which would enable us to deal effectively with it.

Q. For that reason you never recommended prosecution or prosecution was never undertaken?—A. Our work ceased at the filing of a report, and there was never any formal report bringing in any finding that it was against the

public interest.

Q. Did you, at any time when you were Combines Commissioner, suggest legislation or recommend legislation to be an effective answer to this practice which you viewed with such concern?—A. We worked on draft legislation at different times, more particularly after we renewed our activities in 1946. From that time on there were some very serious cases before us. The International Cartel Report had just been published and we were engaged in a number of very important cases. The problem of dealing with resale price maintenance was one we had before us; and at one time I hoped we might have an examination of that particular problem and get advice from someone who would go closely into the matter.

Q. Did you ever recommend legislation?—A. No.

The CHAIRMAN: Mr. Beaudry, Mr. Fulton was just filling in until you returned.

Mr. Beaudry: Mr. McGregor, I have gone over part of the evidence you gave at the Prices Committee hearings in 1948 and, to refresh our minds since half an hour has intervened, I will recall your statement:

I do not think there have been any in the distributive trades.

—referring to single firm monopolies. And there is a second statement to the effect that the degree to which monopoly entered into our general economy was not, in 1948—as far as the work of this particular parliamentary committee on prices was concerned—a question to which the committee should give a great deal of consideration.

Those statements were made by you after you had twenty-three years experience as Commissioner of Combines and had seen the operation of resale

price maintenance for those twenty-three years.

Do I understand you to say that you have revised substantially in your mind the thoughts you then expressed—that were expressed by those statements in 1948?—A. I would like first of all to refer to the statements that were made. I have not got the second day's proceedings before me, but I call your attention to the fact that the whole discussion was prefaced by a statement that we were referring to a single-firm monopoly, and I said I did not think we had any in the distributive trades.

The CHAIRMAN: May I interrupt for a moment. Some of us here would like to have the term "single-firm monopoly" defined? What do you mean by it?

The WITNESS: One firm that has a complete monopoly of business in any one field, might be a rough and ready definition. There is no such thing in the distributive fields in Canada. There was not then and I do not think there is now.

We were referring to the single-firm monopoly and I said we did not have any in the distributive trades. All the discussion that followed was on the basis of that first question that I asked of Mr. Harkness. I asked:

"Are you referring to the single-firm monopoly",

and he replied, "Yes".

The second answer I would like to give to your question is that in the light of the legislation at it was then, and as it is now, I do not think the particular practice of individual manufacturers fixing their own resale prices can be adequately dealt with I referred to that in the next paragraph of my statement in 1948 which appears on page 161:

"The avoidance of price competition, of which price leadership and resale price maintenance are important aspects, is admittedly one of the most difficult to deal with in public policy."

—difficult because of the character of the legislation. That last comment is not part of the quotation.

"Investigations on a more comprehensive scale may indicate the possible application of existing remedies where serious restraint is established. Publicity itself is a very effective weapon when circumstances justify its use. Fuller examination may also lead to more effective public safeguards being devised and applied. The work of this parliamentary committee should contribute to that objective."

You may recall that that particular parliamentary committee did deal with the problem of resale price maintenance but passed it on to the next investigating agency which was established—the Royal Commission on Prices. That commission in turn dealt with the problem to some extent, but suggested that the Combines Commission should be called upon to make further investigations into it.

You may recall that that was in the spring of 1949, and at that time we had a very considerable number of investigations under way. Without enumerating them I do not think there was any year in which we submitted more reports to the minister.

May I continue?

By Mr. Beaudry:

Q. Yes, do.—A. The impossibility of our doing it with the organization we then had was apparent. I recall that in 1949, shortly after the Curtis Commission Report had been filed, I tried my best to find some competent person who would carry on the kind of study that was needed before we could make adequate recommendations. We could not find the man and then, in the following year, 1950, the government appointed the MacQuarrie committee. The MacQuarrie committee has done the kind of thing we hoped we might be able to do in the earlier years.

Q. May I have the copy back if you do not need it? I would like to refer to a part of a sentence which you just used—although I had a list of references which I must have lost. The statement or part of the statement is this: "...

may where serious restraint is established . . . "-A. Pardon me?

Q. "May where serious restraint is established"—does that imply there are cases where there is no serious restraint established by resale price maintenance?—A. They vary in seriousness, there is no question about that. An industry in which most manufacturers or all practice resale price maintenance presents a very much more serious set of circumstances than when only a few practice it.

Q. We will return to this in a minute. That would confirm then this statement today, and I assume you would make it as of today, or was that a

quote—"may where serious restraint is established"—is that a quote from an old testimony or is that a statement as of today?—A. Well, I will repeat it now.

- Q. Then I imagine that would fully corroborate your statement on page 222 I referred to earlier as part of an answer read here, where you have to establish a particular commodity and particular circumstances in every instance. I take it, in other words, that the statement you made then was not made in reference to the existing Act, or not necessarily in reference to the existing Act, but in reference to the necessary examination of the Act of that date as it affected a particular case or industry or commodity before one could establish to one's satisfaction that this had constituted something detrimental to the public?—A. We had no authority to make investigations unless it appeared there was contravention of the legislation.
- Q. I am asking you if this statement which I have read from your answers applies broadly? In other words, when you say you have to examine the particular commodity and particular circumstances, you mean that before one could determine that a crime has been committed, or a would-be crime has been committed, an examination has to be made of the facts, or whether this examination was necessary on account of the provisions of the present Combines Act under which you were operating?—A. We had to examine into the facts and had to consider them in the light of the legislation bearing on them.

Q. That still doesn't answer my question.

Mr. CROLL: Mr. Chairman, I think after putting the question three times perhaps Mr. Beaudry will reword it so the witness can understand it? I am having difficulty, and I am trying very hard.

The CHAIRMAN: Three people around here have reminded me about the ten-minute rule.

Mr. Fulton: Mr. Chairman, in view of the fact we have been interrupted and lost a substantial portion of our time today—and I am prepared to say Mr. McGregor's brief has made a considerable impact on every member—wouldn't it be better, if Mr. McGregor is willing, to have him back at a later date for further questioning?

The CHAIRMAN: It would have to be in the afternoon in view of our commitments up until next week.

Mr. BEAUDRY: If that is the case I would gladly interrupt my questioning at this stage.

Mr. Harkness: There is one point of privilege I would like to make. I think Mr. Beaudry, I am sure without intending to do so, by quoting the questions I asked in the Prices Committee in 1948 may possibly have left the impression as far as the committee is concerned that by these questions I was attempting to defend resale price maintenance and even monopolies. Such was the farthest thought from my mind and I am sure Mr. McGregor will confirm that.

Mr. Beaudry: I will state so. Mr. Chairman, I would submit that I am under some handicap, as all the other members are, by having this brief read without having a chance to study it. I would like to question on the brief and I will leave it entirely in your hands whether somebody else proceeds now.

Mr. Croll: I can exhaust my questions in three minutes.

Mr. BEAUDRY: I will defer then.

By Mr. Croll:

Q. May I put this to you? A great number of the merchants, small merchants in this country, having in mind that this committee may pass this

legislation, are very much worried, confused and frightened about the possibility of impact of loss-leaders upon their business. Now, I have noted what you said today about loss-leaders. Will you please be a little more exhaustive and explain it in a practical fashion—not that you weren't, but I would like your point of view. You seemed to imply it had not done a great deal of damage, is that correct?—A. So much depends on what is meant by loss-leaders. You had a variety of definitions given by one man on Friday last.

Q. Let me say, selling below cost as a lure or bait to get people into the store?—A. I do not think you can put through legislation that will prevent any dealer from selling below cost. On some occasions it is desirable to do so to get rid of old stock. To find what purpose a man had in mind in selling at cost or below cost is just an impossible task. It is impossible to find out what his motives were unless, as in some of the combine cases, he has written down what his motives were.

Q. Let us take the one cent sale the Rexall people use.—A. I do not think they are sold below cost, they can sell two for one and still make money.

Q. The point is the little merchant cannot meet that competition and it is unfair competition to him.—A. The Rexall Stores sell their own products, made by their own principals, and the small merchant is not carrying that line to any extent.

Q. No, but he carries similar lines.—A. He has been at a disadvantage, but as someone explained the other day, the two-for-one sales carry on for

only three days in the spring and three days in the fall.

Q. Without mentioning names, very large department stores, whether in Toronto or here, will run a sale, say, a package of kleenex, a very attractive and essential thing for the home, for almost half the price you can buy it in another store. Now, that is the practice the little merchant is troubled about.—A. Look at the practice in grocery stores. I have occasionally done the family shopping in Loblaw's and I cannot recall any instance of a single item that has been cut to a very low level. Now, there may be the odd individual who will do it at some particular time, with some particular item, but I do not think the cure for that is such a drastic remedy as resale price maintenance, which will prevent all dealers from reducing prices.

Q. I am assuming that the legislation will pass. I am not supporting price maintenance, I am assuming we will put the legislation into effect, and I start from there, and at that particular moment the door is thrown wide open and there is no price maintenance at all, and no one is bound by price maintenance and you see what happens. Now, what is your comment on that?—A. I think legislation can be devised. We were never able to hit upon the particular formula that might be effective. It is not a particularly serious problem under present day conditions; it may be at a later time, and possibly if it were sent back to the MacQuarrie Committee—this might be appropriate—sent it back to the MacQuarrie Committee and ask them to draft legislation that will meet the problem. We have article 498A in the Criminal Code, but it is not satisfactory.

Q. You probably remember this by heart, it is the last paragraph of the MacQuarrie Committee report. They express the same view that you do with respect to it. If we were able to devise legislation that could look after that particular aspect of that, you think it would be wise?—A. Yes.

Q. Thank you.

Mr. THATCHER: What if you could not?

The CHAIRMAN: Order.

By Mr. Fulton:

Q. I think, Mr. McGregor, in an earlier answer you went a little further than that and said in your opinion such legislation could be devised.—

A. Perhaps I did in the statement I read. I think it can be devised, but it is exceedingly difficult because you do not want to prohibit a dealer from selling even below his own costs; when you say "selling below cost", that may mean selling below the cost of a particular distributor, but not necessarily below

the cost of the most efficient.

Q. Then you think it would be possible to devise legislation which would deal with harmful loss-leader practice; because there is a danger that in eliminating harmful loss-leader practice you would also eliminate what you regard as proper.—A. I think it could be done. I am amazed at the capacity of the legal profession to draft provisions that will meet such difficult questions. It is difficult, and it is something I would like to see done. I have no sympathy with the loss-leader—I mean a real loss-leader—that is designed for the purpose of enticing people into the store, and I think it would be desirable to have some legislation to meet it, but it is not a serious evil lottery, nothing like as serious as resale price maintenance.

Q. That is an idea you have expressed already.—A. Yes.

Mr. HEES: I think the great objection to resale price maintenance is-

The CHAIRMAN: These are the closing minutes of our meeting this afternoon. In our next meeting I have Mr. Fulton, Mr. Murray and Mr. Thatcher listed as desiring to question the witness. Mr. Croll wanted to ask just one question, and you know what one question leads to. He probably wanted to raise one problem.

Mr. CROLL: I thought he would say yes to my first question and that would end it!

By Mr. Thatcher:

- Q. Further to Mr. Croll's remarks, Mr. McGregor, would you turn to page 9. I find it difficult to reconcile your answer to Mr. Croll and your statements on the third paragraph on page 9. You stated there, Mr. McGregor, "it would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of outlets". One of the chief fears which small dealers have, is that if this legislation is passed they will be harmed by departmental and chain competition. Can we not assume from the statement in your brief, that abolition of resale price maintenance would decrease the number of outlets?—A. As I have indicated before, in many lines of business there are more dealers than the community needs. Resale price maintenance, through its guaranteed margins, assists them to continue, and also encourages others to come into that field, and when they come in the increased number of dealers means there will be a decrease in the sales of each one and, therefore, a decline in profits.
- Q. Mr. McGregor, I wonder if you would be a little more specific. You said, and again I repeat, "it would require a lot of statistics to prove the perfectly obvious truth that guaranteed margins tend to increase the number of oulets." Now, surely it must follow that you believe if we had no guaranteed margins there would be fewer outlets. You have to be as positive in one conclusion as in the other. Does it not follow from your statement that there would be fewer outlets without resale price maintenance?—A. Under guaranteed margins?

Q. From your statement on page 9.

Mr. Fulton: No, without guaranteed margins.

The WITNESS: No, I say guaranteed margins would increase the number of outlets.

By Mr. Thatcher:

- Q. Therefore, without guaranteed margins, does it not follow there would be fewer outlets?—A. Yes.
- Q. Suppose some of these outlets were to be eliminated if the practice is prohibited, who would be most likely to be forced out of business, the departmental stores, the chain stores, or the small independent retailer, the veterans who have just started up—

The CHAIRMAN: The widows and orphans!

By Mr. Thatcher:

- Q. The Chairman may be facetious but may I suggest that those who are not long in business, and who are not yet financially in a secure position, will be the ones to be eliminated.—A. If the community needs their particular service, the community will patronize them and they will stay in business.
- Q. Yes, but if there are going to be fewer dealers, what kind of dealers do you think will go under, the small independent or the long established and financially secure companies?—A. The ones that are not providing the service, and I mean by service the price and everything else that the community needs.
 - Q. Which ones would they be?

Mr. MACINNIS: What kind of competition would there be under which everyone would survive?

Mr. Thatcher: I do not think this matter should be treated as a joke. Many small men who have just started out in business are the ones who will likely be forced to the wall by cut-throat competition. They are having enough difficulty as it is. If, as Mr. McGregor says, some companies are going to be eliminated, I submit it will be them.

By Mr. Hees:

Q. Woud you not consider it very, very desirable to try first of all—I understand the difficulty with loss-leaders is to define exactly what a loss-leader is—would you not consider it very desirable for us, before there is any attempt to put this legislation prohibiting resale price maintenance through, to, first of all, try and define what a loss leader is and, secondly, to do everything we can to formulate legislation prohibiting loss-leader practice, because in my experience, and I am sure in the experience of every member of this committee, the little man, who is the one we are trying to protect, is scared stiff of this loss-leader practice. That is the protest I have heard from the little dealers in my riding and I would think if the loss-leader practice were looked after there would not be too much objection to prohibiting resale price maintenance.—A. I do not think the problem is as serious under present conditions as you suggest. I do not think there is the same need for immediate action with respect to loss-leaders as there is for action on the practice of resale price maintenance.

Mr. Stewart: Just one question. Is there anything to interfere with a merchant at the present time using as a loss-leader a line that is not price maintained?

The WITNESS: No.

Mr. Fulton: Would it be as effective as using a price maintained item?

Mr. STEWART: I think so.

The CHAIRMAN: Let the witness answer, Mr. Stewart.

The WITNESS: It all depends on the consumers' demand for that particular line.

By Mr. Fulton:

Q. Would there not be a greater impact if an article which had been maintained for a number of years at a certain price were suddenly to be sold at a price less than that?—A. Yes, and I think what will happen if this legislation goes through is that in certain lines where most goods are price maintained it would have a pretty disturbing effect for the time being. There would be a period of adjustment. They would have to learn how to practice freedom, how to act independently.

May I ask Mr. Chairman if I am to be called for another session?

The CHAIRMAN: Mr. McGregor, we are grateful for you having come on such short notice, but I think some members would like to question you a little further, either on Monday or Tuesday afternoon, whichever is the more convenient.

The WITNESS: I am at your disposal.

Mr. CROLL: Let the steering committee decide.

The CHAIRMAN: The steering committee will meet tomorrow afternoon at 3.00.

The meeting adjourned.













GOVT PUBNS

BIMDING SECT. JUL 2 100

